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on behalf of himself and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SERGHEI STIROI, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

ENERGY STAR LIGHTING &
ELECTRIC, INC.; VICTOR
YEVCHENKO; Does 1 through 20,
inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES:

1. Violation of California Unfair Competition Law (Business & Professions Code § 17200 *et seq.*
2. Failure to Provide Accurate Wage Statements;
3. Failure to Pay Minimum Wage for All Hours Worked;
4. Failure to Provide Meal and Rest Periods;
5. Waiting Time Penalties;
6. Failure to Pay Overtime Wages;
7. Failure to Reimburse Business Expenses;
8. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff SERGHEI STIROI (“Plaintiff”), on behalf of himself and all other similarly situated
2 employees hereby files this Complaint against Defendants ENERGY STAR LIGHTING &
3 ELECTRIC, INC; a California Corporation; VICTOR YEVCHENKO, and individual; Does 1
4 through 20 (collectively referred to as “Defendants”). Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This is a class action brought by Plaintiff seeking damages for Defendants’
7 purposeful misclassification of Plaintiff and similarly situated employees as independent contractors.
8 Plaintiff and the class seek damages for inaccurate wage statements, for failure to provide meal and
9 rest periods, failure to pay overtime and minimum wages, failure to reimburse for business expenses,
10 and derivative civil and statutory penalties. Plaintiff seeks these damages and penalties, plus interest
11 and attorney’s fees, on behalf of himself and similarly situated employees.

12 2. During all relevant times, Plaintiff and similarly situated employees worked for
13 Defendants as employees, although they were misclassified as independent contractors. Plaintiff and
14 similarly situated employees were not licensed as contractors for the work which they were
15 performing. Defendants were aware of this, yet still had Plaintiff and similarly situated employees
16 perform work that required a contractor’s license, which is in violation of the California Labor Code.

17 3. Plaintiff and similarly situated employees regularly worked over 8 hours in a day and
18 over 40 hours in a week and did not receive overtime or minimum wages for these hours.

19 **JURISDICTION AND VENUE**

20 4. The Sacramento County Superior Court has jurisdiction in this matter due to alleged
21 violations of California Labor Code §§ 226, 226.3, 226.7, 226.8, 510, 1194. 2802, 2698 *et seq.*, and
22 Business and Professions Code § 17200 *et seq.*

23 5. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
24 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.

25 **PARTIES**

26 6. Plaintiff SERGHEI STIROI is over the age of eighteen (18) and is a resident of the
27 State of California and a former employee of Defendants.
28

1 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant ENERGY
2 STAR LIGHTING & ELECTRIC, INC. is now and/or at all times mentioned in this Complaint a
3 California Corporation and the owner and operator of an industry, business and/or facility licensed to
4 do business and actually doing business in the State of California.

5 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant VICTOR
6 YEVCHENKO is now an individual residing in California over the age of eighteen (18) and is now
7 and/or at all times mentioned in this Complaint was an owner, director, officer, or managing agent of
8 Defendant ENERGY STAR LIGHTING & ELECTRIC, INC.

9 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
10 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
11 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
12 were at all relevant times advised by skilled California employment law attorneys and knew the
13 requirements of the California Labor Code with respect to employee wage statements, payment of
14 wages, reimbursement of business expenses, and provision of meal and rest periods.

15 10. Defendants proximately caused Plaintiff and similarly situated employees to be
16 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
17 Complaint.

18 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
19 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
20 joint venturer of the remaining defendants and was acting within the course and scope of that
21 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
22 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
23 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
24 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
25 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
26 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
27 through 20, inclusive, when they have been determined.

12. On April 22, 2020, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). The LWDA did not respond within 65 days of filing of the PAGA notice.

CLASS ALLEGATIONS

13. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a class action pursuant to California Code of Civil Procedure section 382. The classes that Plaintiff seeks to represent are composed of and defined as follows:

All non-exempt employees who were employed by Defendants in California at any time four (4) years prior to the filing of this Action up to the date that this matter is certified as a class action, who were misclassified as independent contractors.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

(a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiffs at this time, Plaintiff is informed and believes that Defendants may have employed many individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the practices outlined in this Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the Plaintiff Class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants properly classified their employees as independent contractors

- (2) Whether Defendants accurately stated all required information on paystubs issued to members of the Plaintiff Class;
- (3) Whether Defendants maintained the time and payroll records for their employees as required under the California Labor Code.
- (4) Whether Defendants provided meal and rest periods to their employees as required under the California Labor Code.
- (5) Whether Defendants maintained policies and practices that provided meal and rest periods to their employees as required under the California Labor Code.
- (6) Whether Defendants paid overtime and minimum wages to their employees as required under the California Labor Code.
- (7) Whether Defendants reimbursed their employees for reasonable business expenses.
- (8) Whether Defendants required their employees to perform work that required a contractor's license.

- (c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff Class. Plaintiff also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Defendants improperly classified Plaintiff and members of the Class as independent contractors. Additionally, they issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. They also failed to provide meal and rest periods as required under the Labor Code, failed to pay overtime and minimum wages for all hours worked, and failed to reimburse Plaintiff and Class members for reasonable business expenses. As a result, each putative class member will have the same basis for their legal claims.
- (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California, worked for Defendants in California, and is an adequate representative of the putative class as he has no

1 interests that are adverse to those of absent class members. Additionally, Plaintiff has
2 retained counsel who have substantial experience in complex civil litigation and wage
3 and hour matters.

4 (e) Superiority: A class action is superior to other available means for the fair and
5 efficient adjudication of the controversy since individual joinder of all members of
6 the class is impracticable. Class action treatment will permit a larger number of
7 similarly situated persons to prosecute their common claims in a single forum
8 simultaneously, efficiently, and without the unnecessary duplication of effort and
9 expense that numerous individual actions would engender. Further, as damages
10 suffered by each individual member of the classes may be relatively small, the
11 expenses and burden of the individual litigation would make it difficult or impossible
12 for individual members of the class to redress the wrongs done to them, and an
13 important public interest will be served by addressing the matter as a class action.
14 The cost to the court system of adjudication of such individualized litigation would be
15 substantial. Individualized litigation would also present the potential for inconsistent
16 or contradictory judgments.

17 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.

19 GENERAL ALLEGATIONS

20 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as
21 though fully set forth herein.

22 17. Plaintiff began working for Defendants in September 2016 as an electrician.
23 Defendant is in the business of providing electrical installation and related services for
24 businesses. Defendants purposefully misclassified as an Independent Contractor when he began
25 work. Later Defendants reclassified Plaintiff as an employee. Nothing in Plaintiff's job duties
26 changed, he was simply re-classified.

27 18. Plaintiff's employment with Defendants ended on in or around June 2019.
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1 19. During the entire period Plaintiff worked for Defendants, he and other similarly
2 situated aggrieved employees worked for Defendants exclusively. Plaintiff and other similarly
3 situated aggrieved employees operated in the core business of Defendants and were subject to
4 their control and close supervision.

5 20. Plaintiff and similarly situated employees also worked without their own
6 contractor's license. California Labor Code section 2750.5 states that if an employer hires
7 someone to perform any "function or activity" for which a Contractor's License is required by
8 the Contractors State License Law, the employer must prove that the employed person held a
9 valid license to perform required that "function or activity . . . as a condition of having
10 independent contractor status."

11 21. Furthermore, Plaintiff, and other similarly situated aggrieved employees, could
12 not have been appropriately classified as independent contractors, even if they had licenses. *See*
13 *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 916, 416 P.3d 1, 7 (2018)
14 ("[T]he wage order's suffer or permit to work definition must be interpreted broadly to treat as
15 'employees,' and thereby provide the wage order's protection to, all workers who would
16 ordinarily be viewed as working in the hiring business.") (original emphasis). The California
17 Supreme Court's recent *Dynamex* test holds that a hiring entity can prove that a worker is not an
18 employee only if it meets three conditions: "(A) that the worker is free from the control and
19 direction of the hirer in connection with the performance of the work, both under the contract for
20 the performance of such work and in fact; (B) that the worker performs work that is outside the
21 usual course of the hiring entity's business; and (C) that the worker is customarily engaged in an
22 independently established trade, occupation, or business of the same nature as the work
23 performed for the hiring entity." *Dynamex*, 4 Cal. 5th at 916–17.

24 22. Plaintiff, and other similarly situated aggrieved employees, were not free from
25 direction and control; their work was and is integrally involved with the business of Defendants;
26 and they were and are not engaged in an independently established trade or business.

1 23. Even before the California Supreme Court simplified the employment-relationship
2 test in *Dynamex*, Defendants would still be unable to satisfy the older test focused on additional
3 factors. *See JKH Enters. v. Dept. of Industr. Relat.*, 142 Cal. App. 4th 1046 (2006). Specifically,

4 • Plaintiff, and other similarly situated aggrieved employees, were not engaged in a
5 distinct occupation or business apart from Defendant;

6 • The work is the kind of work and occupation which is usually done under the
7 supervision of the employer;

8 • The work was in fact performed under close supervision of Defendants;

9 • The length of time in which services were performed was extended and continuous;

10 • The work was a part of the regular business of Defendants.
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12 24. While Plaintiff was misclassified as an independent contractor, Defendants saved
13 money, but Plaintiff suffered significant financial loss. He was underpaid wages, including
14 overtime wages, was forced to pay for his own business expenses, including but not necessarily
15 limited to, tools and related expenses, and did not have the benefit of employer sponsored
16 benefits and contributions.

17 25. Defendants also violated the Labor Code rights of Plaintiff and other similarly
18 situated employees even when they were classified as non-exempt employees. The company did
19 not pay all accrued but unused vacation days upon termination.

20 26. Additionally, Defendants did not provide Plaintiff, and any similarly aggrieved
21 employees, with all statutorily required meal breaks. For example, Plaintiff, and any similarly
22 aggrieved employees, often worked shifts well in excess of 10 hours, but were never provided
23 with second meal breaks as required by the California Labor Code and applicable Wage Orders.

24 27. Defendants also failed to provide rest periods to their employees. Frequently,
25 Defendants required Plaintiff and similarly situated employees to work through rest periods in
26 order to complete a project on time.

27 28. Plaintiff and similarly situated employees regularly worked over eight (8) hours a
28 day and/or forty (40) hours a week. Defendants did not pay Plaintiff and similarly situated

1 employees all overtime and/or minimum wages earned during their employment. On information
2 and belief, Defendants did not accurately calculate the regular rate of pay when paying overtime
3 wages.

4 29. Defendants failed to pay Plaintiff and similarly situated employees all minimum
5 wages due. Defendants did not pay Plaintiff and similarly situated employees for all hours
6 worked. In addition, Defendants required Plaintiff and similarly situated employees to travel to
7 various offsite work locations. Plaintiff was frequently required by Defendants to transport
8 Defendants' equipment such as scissor lifts and other equipment to Defendants' offsite work
9 locations. Plaintiff and similarly situated employees were not paid the applicable minimum wage
10 for all hours required to travel to these offsite locations. On occasion, when Plaintiff and other
11 employees arrived at these offsite locations, Defendants did not have work for them to perform,
12 so Plaintiff and similarly situated employees were not paid.

13 30. Nor did Plaintiff, and any similarly aggrieved employees, receive wage statements
14 in compliance with California Labor Code section 226. Specifically, the wage statements do not
15 accurately report all applicable hourly rates.

16 31. Defendants did not provide Plaintiff and similarly aggrieved employees all wages
17 owed upon their termination or within seventy-two (72) hours of their separation from
18 employment.

19 32. Plaintiff brings this Class Action on behalf of himself and similarly situated
20 employees in order to fully compensate himself and Class Members for their losses incurred
21 during the class period caused by Defendants' uniform policies and practices which failed to
22 lawfully compensate these employees.

23 33. Defendants' uniform policies and practices alleged herein were unlawful, unfair
24 and deceptive business practices whereby Defendants retained and continues to retain wages due
25 Plaintiff and the other Class Members. Plaintiff and the other Class Members seek an injunction
26 enjoining such conduct by Defendants in the future, relief for the named Plaintiff and the other
27 Class Members who have been economically injured by Defendants' past and current unlawful
28 conduct, and all other appropriate legal and equitable relief.

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FIRST CAUSE OF ACTION
UNFAIR COMPETITION

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

36. Defendants committed numerous violations of the California Labor Code throughout the employment relationship.

37. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

38. As a direct and legal result of Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution as a result of its unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though fully set forth herein.

40. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

*(1) gross wages earned, (2) total hours worked by the employee,
except for any employee whose compensation is solely based on a*

1 salary and who is exempt from payment of overtime under
2 subdivision (a) of Section 515 or any applicable order of the
3 Industrial Welfare Commission, (3) the number of piece-rate units
4 earned and any applicable piece rate if the employee is paid on a
5 piece-rate basis, (4) all deductions, provided that all deductions
6 made on written orders of the employee may be aggregated and
7 shown as one item, (5) net wages earned, (6) the inclusive dates of
8 the period for which the employee is paid, (7) the name of the
9 employee and the last four digits of his or her social security number
10 or an employee identification number other than a social security
11 number, (8) the name and address of the legal entity that is the
12 employer and, if the employer is a farm labor contractor, as defined
13 in subdivision (b) of Section 1682, the name and address of the legal
14 entity that secured the services of the employer, and (9) all
15 applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the
17 employee. The deductions made from payment of wages shall be
18 recorded in ink or other indelible form, properly dated, showing the
19 month, day, and year, and a copy of the statement and the record of
20 the deductions shall be kept on file by the employer for at least three
21 years at the place of employment or at a central location within the
22 State of California.

23 41. Defendants failed to provide an itemized statement or failed to provide an accurate
24 and complete itemized statement showing the requirements set forth in Labor Code section
25 226(a). Defendant failed to list on the wage statements provided to Plaintiff and similarly
26 situated employees wage statements listing all hour worked and the applicable rates of pay and
27 overtime rate. Plaintiff alleges that Defendants failed to provide accurate itemized wage
28 statements in accordance with Labor Code section 226(a) to all members of the Labor Code
Class.

42. Additionally, Plaintiff alleges he suffered injury as a result of Defendants'
knowing and intentional failure to provide accurate and complete information as required by any
one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and
Plaintiff cannot promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's
position would not be able to readily ascertain the information without reference to other
documents or information) from the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

43. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiff and Class Members were damaged and are entitled to statutory and civil penalties under the Labor Code, and attorney's fees and costs, in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Failure to Pay Minimum Wage for All Hours Worked)

44. Plaintiff hereby incorporates by reference Paragraphs 1 through 43 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

45. Defendants were required to compensate Plaintiff with at least the State's minimum wage for all hours worked. *See* Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

46. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

47. Defendants' conduct described herein violates California Labor Code section 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and the Plaintiff Class have been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff and the Plaintiff Class now seek these wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.

48. Also, California Labor Code section 1194 has been violated by, or was caused to be violated by, Defendant VICTOR YEVCHENKO. Plaintiff is informed and thereon believes that Defendant VICTOR YEVCHENKO was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant VICTOR YEVCHENKO may be held liable as the employer for the violations under California Labor Code section 1194.

FOURTH CAUSE OF ACTION
(Failure to Provide Meal and Rest Periods)

49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though fully set forth herein.

1 50. An employer must provide an employee a meal period and/or rest period in
2 accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

3 51. Labor Code section 512 and Wage Order 16-2001, section 10(A) require an
4 employer to provide a meal period of not less than thirty (30) minutes for each work period of
5 more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the
6 employer must provide a second meal period.

7 52. Wage Order 16-2001 section 11(A) requires an employer to provide a rest period
8 of not less than ten (10) minutes for each work period of more than four (4) hours or a major
9 fraction thereof.

10 53. Plaintiff alleges that Defendants failed to provide Plaintiff and similarly situated
11 employees with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff
12 and similarly situated employees worked more than five (5) hours in a day, or to take a second
13 meal break of at least thirty (30) minutes for several work periods that Plaintiff and similarly
14 situated employees worked more than ten (10) hours in a day.

15 54. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten
16 (10) minutes for each work period that he and similarly situated employees worked for four (4)
17 hours or major fraction thereof.

18 55. As a proximate cause of Defendants' failure to provide meal and rest periods,
19 Plaintiffs and members of the Class are entitled to one (1) hour of pay at the regular rate of
20 compensation for each meal period or rest period not provided, as a wage, from three (3) years of
21 the filing of this action, in an amount to be established at trial. *See* Labor Code § 226.7 and
22 Wage Order 16-2001 §§ 10(F), 11(D).

23 56. Also, California Labor Code sections 226.7 and 512, and Wage order 16-2001,
24 have been violated by, or were caused to be violated by, Defendant VICTOR YEVCHENKO.
25 Plaintiff is informed and thereon believes that Defendant VICTOR YEVCHENKO was a person
26 acting on behalf of Defendants, including as an owner and/or managing agent of Defendants,
27 within the meaning of California Labor Code section 558.1. Therefore, Defendant VICTOR
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1 YEVCHENKO may be held liable as the employer for the violations under California Labor
2 Code sections 226.7 and 512 and Wage order 16-2001.

3 **FIFTH CAUSE OF ACTION**
4 **(Waiting Time Penalties)**

5 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as
6 though fully set forth herein.

7 58. An employer must pay an employee who is terminated all unpaid wages
8 immediately upon termination. California Labor Code § 201.

9 59. An employer who willfully fails to pay an employee wages in accordance with
10 California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of
11 up to thirty (30) days. California Labor Code § 203.

12 60. Plaintiff and similarly situated employees did not receive all wages at their
13 termination or separation from employment, including, but not limited to, unpaid overtime and
14 minimum wages, and unpaid meal period penalties.

15 61. Defendants knew of their obligation to pay Plaintiff and Class Members and
16 Defendants' failure to pay all wages was in complete disregard of their obligations. Such
17 conduct shows Defendants' knowledge of their obligation to pay all wages owed upon
18 termination and willful refusal.

19 62. As a proximate result of the Defendants' conduct, Plaintiff and Class members
20 have been damaged and deprived of their wages and thereby seek their daily rate of pay
21 multiplied by thirty (30) days for Defendants' failure to pay all wages due.

22 63. Also, California Labor Code section 203 has been violated by, or was caused to be
23 violated by, Defendant VICTOR YEVCHENKO. Plaintiff is informed and thereon believes that
24 Defendant VICTOR YEVCHENKO was a person acting on behalf of Defendants, including as
25 an owner and/or managing agent of Defendants, within the meaning of California Labor Code
26 section 558.1. Therefore, Defendant VICTOR YEVCHENKO may be held liable as the
27 employer for the violations under California Labor Code section 203.

SIXTH CAUSE OF ACTION
(Failure to Pay Overtime Wages)

64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

65. During the period Plaintiff and similarly situated employees were employed by Defendants, Defendants were required to compensate them one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See* California Labor Code §§ 510, 1194. Although Plaintiff and similarly situated employees regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week, Defendants failed to pay all overtime wages owed to them.

66. Plaintiff and Class members were non-exempt employees under the administrative, executive, or professional exemptions of the applicable Wage Order and California Labor Code section 510.

67. Defendants' conduct described herein violates California Labor Code sections 510 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and Class members have been damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.

68. Also, California Labor Code sections 510 and 1194 have been violated by, or were caused to be violated by, Defendant VICTOR YEVCHENKO. Plaintiff is informed and thereon believes that Defendant VICTOR YEVCHENKO was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant VICTOR YEVCHENKO may be held liable as the employer for the violations under California Labor Code sections 510 and 1194.

SEVENTH CAUSE OF ACTION
(Failure to Reimburse Business Expenses)

69. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as though fully set forth herein.

70. Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

71. Defendants knew that Plaintiff and members of the Class incurred expenses for work purposes, including but not necessarily limited to tools and overnight hotel expenses. However, Defendants did not reimburse Plaintiff or members of the Class for these expenses.

72. Also, California Labor Code section 2802 has been violated by, or was caused to be violated by, Defendant VICTOR YEVCHENKO. Plaintiff is informed and thereon believes that Defendant VICTOR YEVCHENKO was a person acting on behalf of Defendants, including as an owner and/or managing agent of Defendants, within the meaning of California Labor Code section 558.1. Therefore, Defendant VICTOR YEVCHENKO may be held liable as the employer for the violations under California Labor Code section 2802.

73. Defendants' conduct described herein violated California Labor Code section 2802. As a proximate result of Defendants' conduct, Plaintiff and members of the Class have been damaged in an amount to be established at trial, and are entitled to recover these damages, as well as interest and reasonable attorney's fees and costs, pursuant to statute.

EIGHTH CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA § 2698 *ET SEQ.*

74. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 73 as though fully set forth herein.

75. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code violations identified above.

76. On or about April 22, 2020, Plaintiff sent written notice to the LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this First Amended Complaint, the LWDA has not

1 informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such,
2 Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

3 77. Plaintiff is thus entitled to recover civil penalties on behalf of the State of
4 California and all Aggrieved Employees for all violations of the Labor Code from April 22,
5 2019, through trial on this matter.

6 78. Defendants' conduct, as alleged herein, violated various sections of the California
7 labor Code, including but not limited to, the following:

8 79. Labor Code section 1174(d) requires employers to keep "payroll records showing
9 the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
10 accordance with rules established for this purpose by the commission, but in any case shall be
11 kept on file for not less than three years." Defendants did not keep accurate information
12 regarding all hours worked by Plaintiff and similarly situated employees, largely by failing to
13 accurately record all time worked on their time records. This is in violation of the Labor Code.

14 80. Labor Code section 226 requires employers to furnish to employees with "an
15 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
16 the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
17 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
18 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
19 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
20 and only the last four digits of his or her social security number or an employee identification
21 number other than a social security number, (8) the name and address of the legal entity that is
22 the employer . . . and (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee" For the
24 reasons stated above, Defendants failed to comply with these requirements with respect to
25 Plaintiff and similarly situated employees in violation of the Labor Code.

26 81. Labor Code sections 510 and 1194 require employers to pay employees overtime
27 for any work in excess of eight (8) hours in one workday and any work in excess of forty (40)
28 hours in any one workweek. Employers must also pay overtime for the first eight (8) hours

1 worked on the seventh day of work in any one workweek. Finally, employers must pay double
2 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
3 in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above,
4 Plaintiff and similarly situated employees worked over eight (8) hours per day and forty (40)
5 hours per week and were not paid all overtime wages due. This is in violation of the Labor Code.

6 82. During the period Plaintiff and similarly situated employees were employed by
7 Defendants they were entitled to be paid at least the State's minimum wage rate for each hour
8 that they worked. *See, e.g.*, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-
9 2001, section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did
10 not pay Plaintiff and similarly situated employees at least minimum wage for all hours worked.
11 Thus, Plaintiff and similarly situated employees were not paid at least the applicable state
12 minimum wage for all hours worked in violation of the Labor Code. This is in violation of the
13 Labor Code.

14 83. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A)
15 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours
16 worked. For the reasons stated above, Plaintiff and similarly situated employees were not
17 authorized and permitted to take legally compliant meal periods pursuant to California law. This
18 is in violation of the Labor Code.

19 84. Labor Code section 2802(a) states that "An employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
22 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful." For the reasons stated above, Defendants failed to pay required
24 reimbursements to Plaintiff and similarly situated employees for required business expenses in
25 violation of the Labor Code.

26 85. Labor Code sections 201–203 require that all wages, including minimum wages
27 and meal and rest period premiums, be paid to employees upon separation and/or termination of
28 employment. Here, for the reasons stated above, Plaintiff and similarly situated employees did

1 not receive all final wages due and owing to them at the time of termination or seventy-two (72)
2 hours thereafter as required by Labor Code sections 201–203. This is in violation of the Labor
3 Code.

4 86. Labor Code section 558 states that it is unlawful for any employer, or other person
5 acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of
6 the Labor Code or any order of the Industrial Welfare Commission. As described above,
7 Defendant, by and through its agents, violated Plaintiff and similarly situated employees’ rights
8 provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders
9 and incorporated statutes therein.

10 87. Labor Code section 226.8 makes it a legal violation for “any person or employer”
11 to willfully misclassify an individual as an independent contractor. As described above,
12 Defendants willfully misclassified Plaintiff and similarly situated employees as independent
13 contractors in violation of the Labor Code. Thus, Defendant is subject to the various civil
14 penalties described in section 226.8.

15 88. California Labor Code section 2750.5 states that if an employer hire someone to
16 perform any “function or activity” for which a Contractor’s License is required by the
17 Contractors State License Law, the employer must prove that the employed person held a valid
18 license to perform required that “function or activity . . . as a condition of having independent
19 contractor status.” For the reasons explained above, Defendants violated Labor Code section
20 2750.5

21 89. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233
22 Cal. Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California
23 and all aggrieved employees for all violations of the California Labor Code, whether he
24 experienced them personally or not.

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DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For an order certifying the class and sub-classes;
3. For an order certifying Plaintiff's counsel as class counsel;
4. For an order appointing Plaintiff as class representative;
5. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
6. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
8. For injunctive relief;
9. For an award of prejudgment and post-judgment interest; and
10. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: July 16, 2020

Castle Law: California Employment Counsel

By: 

Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff SERGHEI STIROI
and the Class

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 16, 2020

Castle Law: California Employment Counsel

By: 
Timothy B. Del Castillo
Kent L. Bradbury
Attorneys for Plaintiff SERGHEI STIROI
and the Class