

Jonathan Roven (284614)
JONNY LAW
P.O. Box 3989
Valley Village, CA 91617-3989
(818) 639-3997 (p)
(818) 471-4164 (f)
jon@calljonnylaw.com

Attorney for Plaintiff,
JULIO ACEVEDO, an individual

- ORDERED -
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

DEC 17 2020

K. Rahlwes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JULIO ACEVEDO, an individual;

Plaintiff,

v.

RAYMOND SECURITY SERVICES, an
unknown entity; NADINE RAYMOND, an
individual; DOES 1 through 100, inclusive,

Defendants.

CASE NO.: RIC 2001198

UNLIMITED JURISDICTION

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DAMAGES & DEMAND
FOR JURY TRIAL:**

1. FAILURE TO PAY WAGES [Labor Code §§ 201-202, 218, 218.5, 1194, 1194.2, 1197.1]
2. FAILURE TO PROVIDE MEAL AND REST PERIODS [LC § 226.7, § 512, and IWC Wage Orders];
3. FAILURE TO PAY MINIMUM WAGE [Labor Code § 1194 et seq.];
4. FAILURE TO PAY OVERTIME WAGES [Labor Code §§ 1194 and 1194.2 et seq]
5. FAILURE TO PAY WAGES DUE UPON TERMINATION: WAITING TIME PENALTIES [Labor Code §§ 201, 202, 203]
6. FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS [Labor Code § 226, 226.3]
7. UNLAWFUL/UNFAIR BUSINESS PRACTICE [Cal. Business & Professions Code § 17200 et seq.]
8. RETALIATION [Labor Code 98.6]
9. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
10. CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY
11. PRIVATE ATTORNEY GENERAL ACT

1 Plaintiff comes now and complains and alleges as follows:

2 **NATURE OF ACTION**

3 Plaintiff JULIO ACEVEDO, an individual, bring claims against his former employer for
4 failure to pay all wages due, failure to pay overtime wages, failure to provide meal and rest periods,
5 and violation of Labor Code § 201-203 waiting time penalties, Labor Code § 226 inaccurate
6 itemized wage statements, retaliation, and wrongful termination in violation of public policy. As a
7 result of these aforementioned acts Defendants have committed unlawful business practices in
8 violation of *Business and Profession Code* § 17200 et seq. and violated several sections of the
9 California Labor Code, including failing to pay timely wages, failing to pay overtime wages and
10 failing to issue accurate itemized wage statements, wrongful termination, and retaliation.

11 **THE PARTIES**

12 1. Plaintiff JULIO ACEVEDO, an individual, (hereafter “Plaintiff”) is a former non-
13 exempt employee of Defendants.

14 2. At all times herein mentioned, Defendant RAYMOND SECURITY SERVICES,
15 was doing business as a security service in the state of California, County of Riverside. Plaintiff
16 worked for Defendants at its workplace in the County of Riverside.

17 3. At all times herein mentioned, Plaintiff is informed and believes NADINE
18 RAYMOND was the owner of Defendant RAYMOND SECURITY SERVICES, and is a resident
19 of the state of California, County of Riverside. Plaintiff worked for Defendants at its workplace in
20 the County of Riverside.

21 4. Plaintiffs are ignorant of the true names and capacities, whether individual,
22 corporate, or associate, of those Defendants fictitiously sued as DOES 1 through 100 inclusive, and
23 so Plaintiff sues them by those fictitious names. Plaintiffs are informed and believes that each of
24 the DOE Defendants reside in the State of California and are in some manner responsible for the
25 conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named
26 Defendants, Plaintiff will amend this complaint to show the true names and capacities of these
27 fictitiously named Defendants.
28

1 5. Plaintiffs are ignorant of the true names and capacities of the few separate and
2 distinct principle limited partners and members that have not respected the limited partnership
3 and/or Defendants' separate identity, and therefore sues them by the fictitious name of DOES 1
4 through 100 so that such partners and members may be personally liable for the corporate
5 Defendants' actions in order to redress fraud, protect the rights of third persons, or prevent a
6 palpable injustice and allowing this Court to treat the corporate Defendants and DOES 1 through
7 100 as identical entities with identical obligations, if necessary. Upon discovering the true names
8 and capacities of DOES 1 through 100, Plaintiff will amend this complaint to show the true names
9 and capacities of DOES 1 through 100.

10 6. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis
11 of that information and belief alleges that at all times herein mentioned, each of the remaining co-
12 Defendants, in doing the things hereinafter alleged, were acting within the course, scope and under
13 the authority of their agency, employment, or representative capacity, with the consent of her/his
14 Co-defendants.

15 7. Plaintiffs are informed, believe and thereupon allege that Defendant Corporation is
16 and at all times herein mentioned was, a mere shell and sham without capital, assets, stock, or
17 stockholders. Plaintiffs are informed, believes and thereupon alleges that Defendant Corporation
18 were conceived, intended, and used by Defendants and DOES 1-100 as a device to avoid individual
19 personal liability and/or for the purposes of substituting a financially insolvent corporation in the
20 place of Defendants. Plaintiffs are informed, believes and thereupon alleges that at no time after
21 Defendant became incorporated was any stock authorized to be issued or issued, nor has any permit
22 for issuance of stock been applied for with the Commissioner of Corporations.

23 8. Plaintiffs are informed, believes and thereupon alleges that Defendants are and at all
24 times herein mentioned were, so inadequately capitalized that, its capitalization was illusory and
25 trifling. Plaintiffs are informed, believes and thereupon allege that Defendants are, and at all times
26 herein mentioned were, the alter ego of Defendants and there exists, and at all times mentioned
27 herein existed, a unity of interest and ownership between such defendants such that any
28 separateness has ceased to exist, and Defendants used assets of the corporation for their personal

1 use, caused assets of the corporation to be transferred to them without adequate consideration, and
2 withdrew funds from the corporation's bank accounts for their personal use.

3 9. Plaintiffs are informed believes and alleges that all times mentioned herein, Defendants
4 have a shared interest in the business, profits, losses, revenue, labor, employment, policies and
5 operations that these two separate corporate entities can be legally considered the same and/or legally
6 be considered joint employers of all Plaintiffs' named herein. Specifically, the corporate entities share
7 employees, supplies, inventory, employment procedures, payroll account, bank accounts, and jointly
8 create management policies, procedures and guidelines such that it would not offend the interest of
9 justices to consider them the same legal entities for the purposes of liability and judgment in this
10 action.

11 10. Plaintiffs are informed, believes and thereupon alleges that Defendants and all
12 separate entities known or unknown, employed Plaintiff simultaneously, and/or jointly, including
13 but not limited to: sharing employee's services, acting in the interest of both employers for
14 employment purposes, sharing control over employees, including hiring, firing, payroll,
15 supervision, and modifying conditions of employment. Plaintiffs are informed, believes and
16 thereupon alleges that Defendants and all separate entities known or unknown also shared a
17 common management, an interrelationship of operations, and had centralized control of labor and
18 financial resources.

19 **GENERAL ALLEGATIONS**

20 11. At all times pertinent to this action, Plaintiff JULIO ACEVEDO (hereafter
21 "Plaintiff"), was employed as a security guard for Defendants.

22 12. Plaintiff was employed from about August 24, 2019 until February 17, 2020.
23 Plaintiff was paid an hourly wage of \$11 to \$11.25, below minimum wage, and was raised to
24 minimum wage of \$12 in 2020.

25 13. During his employment, Plaintiff was required to work more than 40 hours per
26 week, without receiving overtime wages for those hours worked. Instead of paying overtime
27 wages to Plaintiff, Defendants would sometimes pay straight time. Since Plaintiff was working
28 over eight (8) hours per day, Plaintiff should have been receiving overtime compensation at one

1 and one half (1.5) times his regular rate for any time worked over eight (8) hours until twelve (12),
2 after which Plaintiff should have been receiving overtime compensation at two (2) times his regular
3 rate for any time worked over twelve (12) hours. Defendants would not report all the hours on
4 Plaintiff's itemized statements. Instead, Defendants would pay Plaintiff for hours not reported on
5 the itemized statements in cash. Defendants would deduct 15% off of wage statements and declare
6 it as "personal income."

7 14. Since Plaintiff was working over forty (40) hours per week, he should have been
8 receiving overtime pay at one and one half (1.5) times his regular rate for each hour worked
9 beyond forty (40) hours per week. As a result of this practice, Plaintiff did not receive his regular
10 wages for time worked over forty (40) hours nor additional compensation for overtime hours
11 worked and does not know whether he was paid all regular wages for all regular hours worked
12 because Defendants did not provide him with an accurate wage statement of his hours worked.
13 Moreover, Plaintiff did not receive additional compensation for overtime hours worked and does
14 not know whether he was paid all regular wages for all regular hours worked because Defendants
15 did not provide him with an accurate wage statement of his hours worked.

16 15. Additionally and alternative, because Plaintiff worked a weekly schedule consisting
17 of at least 40 weekly hours, and Defendants only paid for forty (40) hours worked, Plaintiff was not
18 receiving at least a minimum wage for all hours worked. Specifically, California law requires that
19 for each hour worked by an employee under the control and direction of the employer, such
20 employee should be compensated at least the minimum wage set by the state of California.
21 Defendant failed to pay plaintiff all wages for all hours worked.

22 16. Defendants' conduct, namely not paying additional overtime wages for overtime
23 hours worked, failure to pay minimum wage, violated California wage and hour laws by not paying
24 Plaintiff all wages earned.

25 17. At all times herein mentioned, Plaintiff was a non-exempt employee, which entitled
26 Plaintiff to overtime pay and meal and rest period breaks.

27 18. Plaintiff was coerced into giving up full 30 minute meal breaks. His meal breaks
28 and rest breaks were refused. Namely, Defendants coerced Plaintiff to keep working because the

1 store would have customers and Plaintiff was the only person who could attend to those customers.
2 The Defendants grinded Plaintiff and coerced him into working without breaks, in direct violation
3 of California wage and hour laws. Defendants always required Plaintiff to give up his rest breaks.

4 19. Plaintiff complained about not receiving overtime, about a 15% personal income
5 deduction, and other violations. As a result, Defendants cut Plaintiff's hours and later suspended
6 and terminated Plaintiff. The working conditions became so intolerable that Plaintiff resigned from
7 the position.

8 20. In order to obtain Plaintiff's final paycheck, Defendants required Plaintiff sign a
9 document in violation of Labor Code 206.5. Additionally, Defendants and their staff intimidated
10 Plaintiff to signing the document to the point that he was in fear of his physical safety, and
11 therefore signed the document. The document that Plaintiff signed is null and void pursuant to
12 Labor Code 206.5 and any other applicable legal authority.

13 21. Defendants have adopted and are using unfair business practices to minimize their
14 employees' compensation and increase Defendants' profits. Among these unfair business practices
15 are causing Plaintiff to work without paying all regular wages, all overtime wages and coercing
16 Plaintiff into taking shorter meal breaks than required. Defendants' unlawful practices mentioned
17 herein above resulted in Defendants' failure to pay all wages due to Plaintiff and failing to provide
18 accurate itemized wage statements of all hours worked, including hours worked for overtime.

19 22. Defendants' policies and practices of failing to pay overtime compensation and
20 failing to abide by the California Labor Code are repeated and systematic practices depriving
21 Plaintiff of his rights under California Labor laws and all for the benefit of Defendants herein.

22 23. Defendants' conduct, namely not paying additional overtime wages for overtime
23 hours worked, failure to pay minimum wage, violated California wage and hour laws by not paying
24 Plaintiff all wages earned.

25 //

26 //

27 //

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES**

3 **[California Labor Code §§ 201-202, 218, 218.5, 1194, 1194.2, 1197.1]**

4 **(PLAINTIFF AGAINST ALL DEFENDANTS)**

5 24. Plaintiffs reallege the information set forth above and incorporates herein as though fully
6 set forth and alleged.

7 25. At all relevant times herein, Defendants were required to compensate its hourly employees
8 for all hours worked upon reporting to work at the appointed time stated by the employer
9 pursuant to the Industrial Commission Order 5-2001 and 5-2001, California Code of
10 Regulations, Title 8, section 11010.

11 26. Labor Code § 1194 provides in relevant part: “Notwithstanding any agreement to work for
12 a lesser wage, any employee receiving less than the legal minimum wage ... applicable to
13 the employee is entitled to recover in a civil action the unpaid balance of the full amount of
14 this minimum wage ... , including interest thereon, reasonable attorney's fees, and costs of
15 suit.”

16 27. “In any action under ... Section 1194 to recover wages because of the payment of a wage
17 less than the minimum wage fixed by an order of the commission, an employee shall be
18 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
19 and interest thereon.” Labor Code § 1194.

20 28. As mentioned hereinabove, Defendants failed to pay wages for all hours worked,
21 specifically not paying all overtime wages and not paying a minimum wage for all hours
22 worked. Defendants failed to pay any overtime hours worked and instead paid employees
23 no overtime wages or reduced wages for overtime hours worked.

24 29. Accordingly, pursuant to California Labor Code §1194 and 218, Plaintiffs are entitled to
25 recover wages for all hours worked off-the-clock, for all overtime hours worked and for all
26 other hours worked that were not adequately compensated.

1 30. Furthermore, pursuant to California Labor Code §1194.2, Plaintiffs are entitled to recover
2 liquidated damages in an additional amount equal to the amount they are entitled to under
3 §1194 for all wages that were not paid at the legal minimum wage rate.

4 31. Pursuant to Labor Code § 218.5, 1194, and 1197 et seq., Plaintiffs are also entitled to
5 recover applicable statutory and civil penalties, interest, costs, and attorneys' fees
6 associated with this cause of action.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

9 **[Labor Code §§ 226.7(a), 512]**

10 **(AS AGAINST ALL DEFENDANTS)**

11 32. Plaintiffs reallege the information set forth above and incorporates herein as alleged.

12 33. Under Section 11 of Industrial Welfare Commission Order 5-2001 and 7-2001, codified by
13 California Code of Regulations, Title 8, Section 11010, Defendants are required to offer its
14 employees and Plaintiff a thirty (30) minute meal period for shifts worked over five hours
15 in a day, and a second thirty (30) minute meal period for any shift of more than ten (10)
16 hours. Labor Code § 512 codifies the same language from Section 11 of the Industrial
17 Welfare Commission Wage Orders regarding meal periods.

18 34. Under Section 12 of Industrial Welfare Commission Order 5-2001 and 7-2001, California
19 Code of Regulations, Title 8, Section 11010, Defendants are required to offer Plaintiff a ten
20 (10) minute minimum rest period per four (4) hours worked, or major fraction thereof, to be
21 taken, as far as practicable, in the middle of the work period.

22 35. Labor Code § 226.7, subdivision (a), provides: "No employer shall require any employee to
23 work during any meal or rest periods mandated by applicable order of the Industrial
24 Welfare Commission."

25 36. At all times mentioned herein, Plaintiff was entitled to the protections of the Industrial
26 Welfare Commission Orders, California Code of Regulations, Title 8, Section 11010 and
27 Labor Code §§ 512 et seq. and 226.7.
28

- 1 37. During the course of Plaintiff's employment, Defendants failed to offer Plaintiff with
2 mandated meal and rest periods and required Plaintiff to work during mandated meal
3 periods, in violation of the Industrial Welfare Commission Orders mentioned herein, Labor
4 Code Section 226.7, subdivision (a), and Labor Code section 512.
- 5 38. Pursuant to Section 11 (D) of Industrial Welfare Commission Order 5-2001 and 7-2001,
6 California Code of Regulations, Title 8, Section 11010, Defendants were required to pay
7 Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each work
8 day that the meal and rest period was not offered to Plaintiff, in addition to paying Plaintiff
9 compensation for the time worked during the missed meal and rest period.
- 10 39. Defendants willfully refused and continue to refuse to pay Plaintiff compensation for
11 missed meal and rest periods as required by the aforementioned statutes and regulations.
- 12 40. Under Labor Code section 226.7 and applicable IWC Wage Orders, Plaintiffs are entitled to
13 an award of all unpaid premium pay for missed rest breaks.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGE**

16 **[Labor Code §§ 1194 and 1194.2 et seq.]**

17 **(AS AGAINST ALL DEFENDANTS)**

- 18 41. Plaintiffs reallege and incorporates by reference each and every allegation set forth in each
19 of the preceding paragraphs, as though fully set forth and alleged herein.
- 20 42. At all relevant times herein, Defendants were required to compensate their hourly
21 employees for all hours worked upon reporting to work at the appointed time stated by the
22 employer pursuant to the *Industrial Commission Orders* 1-90 and 1-98, codified as
23 California Code of Regulations, Title 8, section 11010.
- 24 43. At all relevant times herein, Defendants were required to compensate all employees not less
25 than the minimum wage set by the state of California for all hours worked. *Labor Code* §
26 1194 provides that: "Notwithstanding any agreement to work for a lesser wage, any
27 employee receiving less than the legal minimum wage ... applicable to the employee is
28

entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... , including interest thereon, reasonable attorney's fees, and costs of suit.”

44. “In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be ***entitled to recover liquidated damages*** in an amount equal to the wages unlawfully unpaid and interest thereon.” (emphasis added) *Labor Code* § 1194.

45. Defendant fails to compensate Plaintiff at less the requisite minimum wage for all hours worked. Specifically, because the Defendant only compensated plaintiffs’ for a 40 hour work week even though plaintiff worked at least 40 hours per week – the defendant failed to compensate the plaintiff for a minimum wage for every hour worked.

46. Accordingly, pursuant to *Labor Code* § 1194 and § 218, Plaintiffs are entitled to recover minimum wages for all hours worked as described hereinabove.

47. Pursuant to California *Labor Code* §§ 1194.2 and 218, Plaintiffs are entitled to recover liquidated damages in an additional amount equal to the amount they are entitled to under §1194.

48. Pursuant to Labor Code § 1194, Plaintiffs are also entitled to recover interest, costs, and attorneys’ fees associated with this cause of action.

FOURTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

[Labor Code §§ 510 and 1194]

(AS AGAINST ALL DEFENDANTS)

49. Plaintiffs reallege and incorporates by reference each and every allegation set forth in each of the preceding paragraphs, as though fully set forth and alleged herein.

50. Pursuant to Labor Code § 510, Defendants were required to compensate its employees at a rate of no less than one and one-half (1.5) their hourly rate for work in excess of eight (8) hours daily, forty (40) hours a week, and the first eight (8) hours worked on the seventh day. Furthermore, Labor Code § 510 expressly states that “in addition, any work in excess

1 of eight (8) hours on the seventh day of a workweek shall be compensated at no less than
2 twice the regular rate of pay of an employee.”

3 51. Labor Code § 1194 also establishes the fundamental public policy of paying the proper
4 legal overtime rate: “notwithstanding any agreement to work for a lesser wage, any
5 employee receiving less than the legal minimum wage or the legal overtime compensation
6 applicable to the employee is entitled to recover in a civil action the unpaid balance of the
7 full amount of this minimum wage or overtime compensation, including interest thereon,
8 reasonable attorneys’ fees and costs of suit.”

9 52. Plaintiff was a non-exempt employee entitled to the protections of the Industrial Welfare
10 Commission Orders mentioned herein, California Code of Regulations, Title 8, Section
11 11010.

12 53. Defendants’ conduct described herein, namely, requiring Plaintiff to work without paying
13 overtime wages for hours worked over eighth (8) hours per day, or forty (40) hours per
14 week without paying certain overtime wages, is a violation of the California overtime laws.
15 Pursuant to Labor Code Sections 510, and 1194, Plaintiffs are entitled to recover unpaid
16 overtime wages for the nonpayment of overtime hours worked, penalties, costs plus
17 reasonable attorneys’ fees.

18 54. Under Labor Code section 1194.6, Plaintiffs are entitled to an award of interest on all due
19 and unpaid wages at the rate of interest specified in Civil Code section 3289, subdivision
20 (b), in this action for the nonpayment of the legal overtime compensation and including
21 costs of suit.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES DUE UPON TERMINATION:**

24 **WAITING TIME PENALTIES**

25 **[Labor Code §§ 201, 202 and 203]**

26 **(AS AGAINST ALL DEFENDANTS)**

27 55. Plaintiffs reallege the information set forth above and incorporate herein, as though fully set
28 forth and alleged herein.

1 56. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
2 owing to former employees at or around the time their employment is terminated.

3 57. California Labor Code § 203 provides that if an employer willfully fails to pay
4 compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then
5 the employer is liable for penalties in the form of continued compensation up to thirty (30)
6 work days.

7 58. Defendants willful failure to pay Plaintiff all wages and failed to pay proper premium pay
8 wages, failure to pay a minimum wage, failure to pay overtime wages, failure to pay wages
9 for off-the-clock hours worked and for all employees who are no longer employed by
10 Defendants for all wages due to them at the time of his separation as required by California
11 Labor Code §§ 201 and 202.

12 59. California Labor Code § 203 provides that an employee's wages not paid upon termination
13 shall continue as a penalty until paid or for a period of up to thirty (30) days from the time
14 they were due.

15 60. Defendant's failure to pay all wages owed was willful and intentional and Plaintiffs are thus
16 entitled to penalties under Labor Code § 203.

17 61. Pursuant to Labor Code § 203, Plaintiffs are entitled to thirty (30) days worth of wages as a
18 penalty, plus attorneys' fees, calculated against Defendant by multiplying their daily rate of
19 pay by thirty (30) days.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS**

22 **[Labor Code § 226 et seq.]**

23 **(AS AGAINST ALL DEFENDANTS)**

24 49. Plaintiffs reallege the information set forth above and incorporates herein, as though
25 fully set forth and alleged herein.

26 50. California Labor Code § 226(a) requires that employers, when paying their non-
27 exempt employees wages, include an "itemized statement in writing showing" the "total hours
28

1 worked by the employee,” and “all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate.”

3 51. Defendants implemented an employment practice whereby it failed to provide
4 Plaintiff with accurate wage statements or paychecks. Defendants failed to provide or maintain an
5 accurate record of overtime hours worked.

6 52. Defendants have willfully and intentionally violated California Labor Code § 226(a)
7 by failing to maintain an accurate record of the total hours worked, failing to maintain an accurate
8 record of the applicable overtime rates paid or owed, failing to maintain an accurate record of
9 overtime hours worked, and failing to pay overtime rates on Plaintiff’s wage statements, paychecks
10 and check stubs.

11 53. As a result of Defendants’ violation of Labor Code § 226, Plaintiffs are entitled to
12 \$50.00 for each pay period in which there is an initial violation of Section 226 and \$100.00 for
13 each subsequent pay period in which there is a further violation.

14 54. Plaintiffs seek injunctive relief under Labor Code § 226 in the form of an order from
15 the Court ordering Defendants to properly state the wages earned, the proper hours worked and the
16 proper overtime wages paid – and to furnish accurate wage statements to Plaintiffs, as well as other
17 similarly situated employees of Defendant.

18 55. Plaintiffs allege that they are due a maximum of \$4,000.00, as non-taxed penalties
19 and restitution, plus cost and attorneys’ fees, for pay periods in which Defendants has failed to
20 comply with Labor Code § 226 and for up to one year from the date of filing this action.

21 **SEVENTH CAUSE OF ACTION**

22 **UNLAWFUL/UNFAIR BUSINESS PRACTICES**

23 **[Business and Professions Code § 17200 et seq.]**

24 **(AS AGAINST ALL DEFENDANTS)**

25 56. Plaintiffs reallege the information set forth above and incorporates herein, as though
26 fully set forth and alleged herein.

27 57. California Business & Professions Code § 17200 et seq. prohibits any unlawful,
28 unfair, or fraudulent business practices.

1 58. Labor Code § 90.5(a) states that it is the public policy of California to force
2 vigorously minimum labor standards in order to ensure employees are not required to work under
3 substandard and unlawful conditions, and to protect employers who comply with the law from
4 those who attempt to gain competitive advantage at the expense of their workers by failing to
5 comply with minimum labor standards.

6 59. By violating the aforementioned statutes and regulations, including California Labor
7 Code, §§ 226, 510, 512, 1194, and sections of IWC Wage Orders, as alleged above and
8 incorporated herein, the acts of Defendants constitute unfair and unlawful business practices under
9 California Business & Professions Code, Section 17200, et seq.

10 60. Defendants' violations of sections of the California Labor Code, as alleged above,
11 constitute an unfair business practice because these were done repeatedly over a significant period
12 of time and in a systematic manner to the detriment of Plaintiff. All of the foregoing harmed
13 Plaintiff by not paying wages owed and earned.

14 61. Under Section 17208 of the California Business and Professions Code, the statute of
15 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for the
16 unpaid wage causes of actions alleged hereinabove are extended from three years of recovery for
17 wage claims to an additional fourth year of recovery.

18 62. Defendants engaged in unfair competition in violation of Cal. Bus & Prof. Code, §
19 17200 et seq. by violating, inter alia, each of the above causes of actions and Cal. Labor Code §
20 1194 and 1194.2, Cal. Labor Code §§ 203, 222, 222.5, 223 and 227.3, 226.7, 512 and Cal. Labor
21 Code §§ 2800, 2802.

22 63. Defendants' course of conduct, act and practice in violation of the California laws
23 mentioned in each paragraph above constitute separate and independent violations of 17200 et seq.
24 of the California Business and Professions Code.

25 64. Pursuant to California Business and Professions Code § 17000 et seq. and § 17200
26 et seq., the acts constituting continuing and ongoing unlawful activities justify the issuance of an
27 injunction and all remedies available in the form of unpaid wages, penalties and specific damages
28 are cumulative and recovered for Plaintiff and each aggrieved employee.

65. Further, Plaintiff request attorneys' fees and costs pursuant to *Code of Civil Procedure* section 1021.5 upon proof they have acted in the public interest as set forth in the Private Attorney General Act.

EIGHTH CAUSE OF ACTION

RETALIATION

[Labor Code Section 98.6]

(AGAINST ALL DEFENDANTS)

66. Plaintiffs reallege the information set forth above and incorporates herein, as though fully set forth and alleged herein.

67. Under Labor Code section 98.6, an employer may not discriminate or retaliate against an employee who complains about an employer's violations of the Labor Code and/or an employer's unlawful wage practices.

68. Under California Labor Code section 1102.5, subdivision (b), an employer may not discriminate or retaliate against an employee who discloses information “to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.”

69. Defendants wrongfully and unlawfully retaliated against Plaintiff for complaining about Defendants' refusal to pay overtime and the deductions of 15% on Plaintiff's paychecks for "personal income." At the time Plaintiff made the complaints, Plaintiff had reasonable cause to believe that his complaints concerned violations of state or federal law or regulations.

70. Defendants' unlawful practices as outlined herein directly contravene Labor Code sections 98.6 and 1102.5, subdivision (b).

71. By reason of the conduct of the Defendants and each of them as alleged herein, Plaintiff has necessarily retained an attorney to prosecute the within action. Plaintiff is therefore entitled to reasonable attorney's fees and litigation expenses, including expert witness fees and

costs, incurred in bringing the within action. Plaintiff is entitled to reasonable attorney's fees pursuant to Code of Civil Procedure Section 1021.5.

72. As a direct and proximate result of the aforesaid acts of the Defendants, Plaintiff suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, all in an amount subject to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to Civil Code § 3287 and any other provision of law providing for prejudgment interest.
73. As a direct and proximate result of said wrongful acts by the Defendants, Plaintiff suffered and will continue to suffer mental suffering, emotional distress, shock, grief, depression, anxiety, nervousness, worry, stress, inconvenience, mortification, indignity, fear, fright, terror and ordeal, all to Plaintiff's damages in an amount to be proven at time of trial.
74. In addition, Defendants acted with oppressive, fraudulent, or malicious intent, and exhibited a deliberate disregard for Plaintiff's rights in wrongfully terminating him. Based on Defendants' willful, malicious, despicable, and oppressive acts of wrongfully terminating Plaintiff, Plaintiff seeks an award of other special damages recoverable pursuant to the public policies underlying California Labor Code § 98.6, and other anti-retaliation statutes, including punitive damages in an amount according to proof at trial pursuant to California Civil Code section 3294, so as to punish Defendants and deter them from similar conduct in the future.

NINTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(AGAINST ALL DEFENDANTS)

75. Plaintiffs reallege the information set forth above and incorporates herein, as though fully set forth and alleged herein.
76. An exception to the general at-will employment presumption is made and a tortuous wrongful discharge claim will lie where an employer's termination of an employee violates a fundamental public policy, or in other words, where "she is discharged for performing an act that public policy would encourage, or for refusing to do something that public policy

would condemn.” (Gantt v. Sentry Ins. (1992) 1 Cal.4th 1083, 1090; Green v. Ralee Engineering Co. (1998) 19 Cal.4th 66, 70-80; Tamney v. Atlantic Richfield Co. (1980) 27 Cal.3d 167, 172.)

77. At all times mentioned herein, the California Labor Code, including Sections 98.6, 232.5, and 1102.5, IWC Orders, in addition to numerous other laws and regulations, were in full force and effect and establish that the public policy of the State of California is, in part, to protect and safeguard the right and opportunity of all persons to seek and hold employment without discrimination or retaliation on account of their engagement in protected activity, including reporting, disclosing and/or complaining about wrongful and/or unlawful labor practices, and to protect and safeguard employees in assertion of their right under the Labor Code to full, timely, and equitable payment of wages.

78. Defendant's termination of Plaintiffs' respective employment was retaliation motivated, at least in part, by Plaintiffs' respective complaints regarding his not being paid overtime and deducting 15% from paychecks for personal income.

79. Defendant terminated Plaintiffs' respective employment as retaliation, at least in part, in response to Plaintiffs' respective complaints regarding his not being paid overtime and deducting 15% from paychecks for personal income, which were, or were reasonably understood to be unlawful and/or to amount to misdemeanors. Defendants' termination of Plaintiffs' respective employment was additionally or alternately retaliation motivated, at least in part, by Defendants' fear that Plaintiffs would report Defendants' unlawful workplace practices to an enforcement agency.

80. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs have each sustained substantial losses in earnings and other employment benefits in an amount according to proof at the time of trial. As a further proximate result of Defendant's wrongful conduct, Plaintiffs have each suffered and continues to suffer shock, embarrassment, humiliation, emotional distress and mental anguish, and other injuries, all to their damage in an amount according to proof at time of trial.

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TENTH CAUSE OF ACTION

CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

(AGAINST ALL DEFENDANTS)

81. Plaintiffs reallege the information set forth above and incorporates herein, as though fully set forth and alleged herein.

82. Plaintiff was employed by Defendants. Plaintiff was subjected to working conditions that violated public policy, in that Plaintiff was required to work more than forty hours per week for less than minimum wage on occasions, work without breaks for long periods of time of 12 hours and sometimes beyond, and other violations.

83. Defendants intentionally and knowingly created these working conditions.

84. These working conditions were so intolerable that a reasonable person in Plaintiff's position would have no reasonable alternative except to resign.

85. Plaintiff resigned because of these working conditions, which were a substantial factor in causing Plaintiff's harm.

ELEVENTH CAUSE OF ACTION

PRIVATE ATTORNEY GENERAL ACT

(VIOLATION OF LABOR CODE §§ 201-203, 204, 210, 216, 225.5, 226.3, 450, 512, 558)

86. By Plaintiffs in their individual capacities and in their capacities as representatives against all DEFENDANTS.

87. Plaintiffs reallege the information set forth above and incorporate herein, as though fully set forth and alleged herein.

88. As alleged herein, Defendants have committed several Labor Code violations against Plaintiffs and other former and current employees in the State of California.

89. Plaintiffs, as "aggrieved employees" within the meaning of California Labor Code sections 2698 et seq., acting on behalf of themselves and other former and current non exempt employees of Defendants, bring this action to recover the civil penalties provided for under the Labor Code Private Attorney General Act of 2004 (hereafter, "PAGA"), including, but not limited to, the penalties provided under Labor Code sections 210, 225.5, 226.3, 558 and

1 2699, subdivisions (a) and (f), for the following knowing and intentional Labor Code
2 violations:

- 3 a. Failing and/or refusing to provide required meal periods to Plaintiffs and other
4 aggrieved employees, in violation of California Labor Code section 512 and Wage
5 Order 9 2001 (Cal. Lab. Code, §§ 558 & 2699(a));
- 6 b. Failing and/or refusing to provide required rest periods to Plaintiffs and other
7 aggrieved employees, in violation of California Labor Code section 226.7 (a) and
8 Wage Order 9 2001 (Cal. Lab. Code, §§ 558 & 2699(a));
- 9 c. Failing and/or refusing to pay Plaintiffs and other aggrieved employees the
10 additional hour of compensation for every shift that a mandated meal period is not
11 provided, in violation of California Labor Code section 226.7 and Wage Order 9
12 2001 (Cal. Lab. Code, § 2699(f));
- 13 d. Failing and/or refusing to pay Plaintiffs and other aggrieved employees the
14 additional hour of compensation for every shift that a mandated rest period is not
15 provided, in violation of California Labor Code section 226.7 and Wage Order 9
16 2001 (Cal. Lab. Code, § 2699(f));
- 17 e. Failing and/or refusing to pay all wages and compensation earned by Plaintiffs and
18 other aggrieved employees within the time limits prescribed by California Labor
19 Code section 204 (Cal. Lab. Code, §§ 210 & 2699(a));
- 20 f. Failing and/or refusing to properly maintain records of, and furnish to Plaintiffs and
21 other aggrieved employees, accurate, itemized wage statements, in violation of
22 California Labor Code section 226 (Cal. Lab. Code, §§ 226.3 & 2699(a));
- 23 g. Unlawfully withholding accrued wages owing to Plaintiffs and other aggrieved
24 employees, in violation of California Labor Code section 216 (Cal. Lab. Code, §§
25 225.5 & 2699(a)); and
- 26 h. Other violations of the California Labor Code as may be disclosed in discovery.

27 90. Plaintiffs sent a written notice by certified mail to Defendants, and to the California Labor
28 and Workforce Development Agency (hereafter, "LWDA"), giving notice of Defendants'
violations of the California Labor Code, and of Plaintiff's' intent to bring a claim for civil
penalties under the California Labor Code Private Attorney General Act, Cal. Lab. Code,

1 §§ 2698 et seq. Additional written notices were sent to both defendants and the LWDA on
2 September 1, 2010 and on February 10, 2011, as additional information were obtained in
3 discovery in this action. On June 28, 2010, and on September 30, 2010, the LWDA
4 notified PLAINTIFFS in writing that it does not intend to investigate the allegations against
5 defendants.

6 91. Plaintiffs have complied with the requirements for aggrieved employees to commence a
7 civil action, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).
8 Accordingly, Plaintiff will prosecute this cause of action to recover civil penalties against
9 Defendants arising from the above cited violations. These civil penalties include the
10 prescribed monetary penalties under Labor Code sections 210 and 2699(f) as well as the
11 recovery of such amounts sufficient to recover underpaid wages of Plaintiff and other
12 aggrieved employees, pursuant to Labor Code section 558(a). Any wages recovered under
13 this cause of action shall be paid to the affected employees.

14 86. Pursuant to California Labor Code § 2699, Plaintiffs should be awarded twenty five percent
15 (25%) of all penalties due under California law. Plaintiffs were also compelled to retain the
16 services of counsel to file this court action to protect their interests and those of other
17 aggrieved employees , and to assess and collect the civil penalties owed by Defendants to
18 the Labor and Workplace Development Agency. Plaintiffs thereby incurred attorneys' fees
19 and costs, which they are entitled to recover under California Labor Code section 2699.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs hereby formally demand a trial by jury.

22 WHEREFORE, the Plaintiff prays for the following relief:

23 **As to the First Causes of Action:**

- 24 1. A declaratory judgment that Defendants violated *Labor Code* §§ 1194 and §1194.2 by
25 failing to pay all wages and unlawful deduction of work related expenses;
26 2. For all unpaid wages;
27 3. For injunctive relief as justice requires, including an accounting of all hours worked, all
28 wages paid and any financial records relating to Plaintiffs' employment, restitution and other
equitable relief as justice requires.

1 4. For attorney fees and costs under all applicable statutes alleged herein;

2 As to the Second Causes of Action:

3 5. A declaratory judgment that Defendants violated Labor Code §§ 226.7 and 512 and
4 applicable Industrial Welfare Commission Wage Orders 7-2001 by failing to provide meal periods
5 and rest periods and failing to pay premium wages for missed rest periods.

6 6. For unpaid premium pay wages for missed breaks:

7 a. For Plaintiffs missed meal and rest breaks in an amount according to proof;

8 7. For injunctive relief as justice requires, including an accounting of all hours worked, all
9 wages paid and any financial records relating to Plaintiff's employment, restitution and other
10 equitable relief as justice requires.

11 As to the Third Causes of Action:

12 8. A declaratory judgment that Defendants violated *Labor Code* § 1194 for failing to pay a
13 minimum wage for all hours worked;

14 9. For all unpaid minimum wages for Plaintiffs in an amount according to proof;

15 10. For all penalties under Seq. 1194.2, including liquidated damages: for \$an amount
16 according to proof;

17 11. For all penalties under Seq. 1194.1, including (\$100) for the initial failure to pay all
18 minimum wages, and (\$250) for each subsequent failure to pay minimum wages, for each pay
19 period that wages are underpaid;

20 12. For all interest, costs, and reasonably attorney's fees in accordance with Labor Code §§
21 1194 and 1194.2 et seq;
22 For injunctive relief as justice requires, including an accounting of all hours worked, all wages paid
23 and any financial records relating to Plaintiff's employment, restitution and other equitable relief as
24 justice requires;

25 As to the Fourth Causes of Action:

26 13. A declaratory judgment that Defendants violated *Labor Code* § 510 and § 1194 for
27 failing to pay overtime wages for hours worked over eight hours per day, or forty hours per week.

28 14. For all unpaid overtime wages:

1 a. To Plaintiffs in an amount according to proof;

2 15. For all penalties and an award of costs, interest and reasonably attorney's fees in
3 accordance with Labor Code §§ 1194 and 1194.2 et seq;

4 16. For injunctive relief as justice requires, including an accounting of all hours worked, all
5 wages paid and any financial records relating to Plaintiff's employment, restitution and other
6 equitable relief as justice requires.

7 As to the Fifth Causes of Action:

8 17. A declaratory judgment that Defendants violated Labor Code §§ 201, 202, and 203 by
9 failing to pay Plaintiffs, and each of them, for all wages due at time of his separation.

10 18. For all penalties and an award of costs, interest and reasonably attorneys fees in
11 accordance with Labor Code §§ 201, 202, and 203;

12 a. To Plaintiffs in an amount according to proof in waiting time penalties.

13 19. For injunctive relief as justice requires, including an accounting of all hours worked, all
14 wages paid and any financial records relating to Plaintiff's employment, restitution and other
15 equitable relief as justice requires.

16 As to the Sixth Cause of Action

17 20. A declaratory judgment that Defendants violated Labor Code § 226 et seq. by failing to
18 provide Plaintiff an accurate itemized wage statement.

19 21. For all penalties pursuant to Labor Code §§ 226 et seq , which is the great of all actual
20 damages, or the maximum penalty of \$4,000 to Plaintiff, in the amount of \$50 for the initial
21 penalty, plus \$100 for each subsequent penalty;

22 22. For an award of costs, interest and reasonably attorneys fees in accordance with Labor
23 Code §§ 226 et seq.;

24 23. For injunctive relief as justice requires, including an accounting of all hours worked, all
25 wages paid and any financial records relating to Plaintiff's employment, restitution and other
26 equitable relief as justice requires.

27 As to the Seventh Cause of Action

1 24. For equitable relief in the form of an order requiring Defendant, its agents, servants, and
2 employees and all persons acting directly or indirectly, in concert with them, to restore and
3 disgorge all funds to Plaintiff acquired by means of any act or practice declared by this Court to be
4 unlawful, unfair or fraudulent and therefore constituting unfair competition under § 17200 et. seq
5 of the Cal. Business & Professions Code.

6 25. For all unpaid wages as alleged and detailed above;

7 26. For additional cumulative penalties, forfeitures in the amount of \$2,500 for plaintiff in
8 penalties; and for additional penalties according to proof;

9 27. For equitable relief in the form of an order and restitution in the form of an additional
10 fourth year of recovery for unpaid wages as result of Defendant's violation of California wage and
11 hour laws mentioned herein.

12 As to the Eighth Cause of Action

13 1. For general damages according to proof, however, no less than the jurisdictional limit of
14 this court;

15 2. For special damages according to proof, however, no less than the jurisdictional limit of
16 this court;

17 3. For economic losses, both past and future, and consequential damages according to
18 proof, however, no less than the jurisdictional limit of this court;

19 4. For a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
20 violation;

21 5. For punitive damages according to proof;

22 6. For attorneys' fees as provided by law;

23 7. For prejudgment, post-judgment and other interest as provided by law;

24 8. For costs of suit incurred herein;

25 9. For such other and further relief as the Court deems fair and just.

26 As to the Ninth Cause of Action

27 1. General, special, actual, compensatory, and/or nominal damages in an amount according
28 to proof;

2. Statutory penalties and other remedies, as provided for by the Labor Code;
3. Exemplary and punitive damages in an amount sufficient to deter future conduct;
4. Temporary and preliminary orders, and/or permanent injunctive relief, enjoining Defendants and their agents, servants and employees, from unfair and/or unlawful conduct;
5. Reasonable attorneys' fees;
6. Pre-judgment and post-judgment interest, at the maximum legal rate;
7. For costs of suit incurred herein; and
8. For such other and further relief as the Court may deem just and proper.

Tenth Cause of Action

1. General, special, actual, compensatory, and/or nominal damages in an amount according to proof;
2. Statutory penalties and other remedies, as provided for by the Labor Code;
3. Exemplary and punitive damages in an amount sufficient to deter future conduct;
4. Temporary and preliminary orders, and/or permanent injunctive relief, enjoining Defendants and their agents, servants and employees, from unfair and/or unlawful conduct;
5. Reasonable attorneys' fees;
6. Pre-judgment and post-judgment interest, at the maximum legal rate;
7. For costs of suit incurred herein; and
8. For such other and further relief as the Court may deem just and proper.

As to the Eleventh Cause of Action:

9. For all fees and costs;
10. For all costs and disbursements incurred in this suit;
11. For such other and further relief as the Court deems just and proper;
12. For attorney fees and costs under all applicable statutes alleged herein;
13. That this Cause of Action may be maintained as a representative cause of action; and
14. For restitution of all monies due from the unlawful business practices and injunctive relief.

As to all causes of action:

1. For compensatory damages, including back pay, front pay, and employment benefits, according to proof on each cause of action.
2. For mental and emotional distress damages on each cause of action, according to proof on each cause of action.
3. For punitive damages;
4. For an award of interest, including pre-judgment interest at the legal rate;
5. For reasonable attorney's fees;
6. For costs of suit herein incurred; and
7. For such other and further relief as the court deems proper.

DATED: November 12, 2020 JONNY LAW

By _____
Jonathan D. Roven, Attorney for Plaintiff