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ATTORNEYS FOR PLAINTIFF TRAVIS WEIR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

(UNLIMITED JURISDICTION)

TRAVIS WEIR, individually and on behalf of
all others similarly situated,

PLAINTIFF,

VS.

ROCKFORCE CONSTRUCTION, LLC, a
California Limited Liability Corporation, and
DOES 1-100,

DEFENDANTS.

CASE NO.: **CIVDS 2018044**

CLASS ACTION COMPLAINT FOR:

- (1) FAILURE TO PAY REGULAR
AND OVERTIME, AND
PREVAILNG WAGES (CAL.
LABOR CODE §§ 510, 1194,
1194.2.);
- (2) FAILURE TO PROVIDE MEAL
BREAKS (CAL. LABOR CODE §§
512, 226.7);
- (3) FAILURE TO AUTHORIZE AND
PERMIT REST BREAKS (CAL.
LABOR CODE §§ 226.7);
- (4) FAILURE TO PAY SICK TIME
(CAL. LABOR CODE §246);
- (5) FAILURE TO ISSUE ACCURATE
ITEMIZED WAGE STATEMENTS
[CAL. LABOR CODE §§ 226,
226.3];

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 20 2020

BY Felix Garza
FELIX GARZA, DEPUTY



BY FAX

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(6) **FAILURE TO PAY ALL WAGES
DUE UPON SEPARATION OF
EMPLOYMENT (CAL. LABOR
CODE §§ 201-203); AND**

(7) **UNFAIR/UNLAWFUL BUSINESS
PRACTICES (CAL. BUS. AND
PROF. CODE §§ 17200 ET SEQ);**
JURY DEMAND

Plaintiff TRAVIS WEIR (hereinafter referred to as "Plaintiff") by and through his undersigned attorneys, for their Class Action Complaint against Defendant ROCKFORCE CONSTRUCTION, LLC and Does 1 through 100 (ROCKFORCE CONSTRUCTION, LLC and Does 1 through 100 shall collectively be referred to as "Defendants"), respectfully alleges the following:

I. NATURE OF ACTION

1. Plaintiff brings this action on behalf of himself, as a class action and on behalf of the California general public, against Defendants for Defendants' failure to pay its California construction workers regular and overtime wages, failure to provide off-duty meal breaks, failure to provide rest breaks, failure to pay sick pay, failure to issue accurate itemized wage statements, and failure to pay all wages due upon separation of employment. As a result of these acts or omissions, Defendants have violated California statutory laws as described below.

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1 San Bernardino County.

2 7. Upon information and belief, Defendant Rockforce Construction, LLC is a
3 California Limited Liability Corporation. The company's headquarters is located at 26772 Vista
4 Terrance; Lake Forest, CA 92630.

5 8. Defendants transact millions of dollars of business in the State of California. Plaintiff
6 are ignorant of the true names and capacities, whether individual, corporate, or associate, of
7 those defendants fictitiously sued as DOES 1 through 100 inclusive and so the Plaintiff sue them
8 by these fictitious names. The Plaintiff are informed and believe that each of the DOE
9 Defendants resides in the State of California and are in some manner responsible for the conduct
10 alleged herein. Upon discovering the true names and capacities of these fictitiously named
11 defendants, the Plaintiff will amend this complaint to show the true names and capacities of these
12 fictitiously named defendants.
13

14 IV. CLASS ACTION ALLEGATIONS

15 9. Plaintiff brings this case as a class action pursuant to California Code of Civil
16 Procedure § 382 on behalf of a class (hereafter referred to as the "Class" and "Class Members")
17 consisting of:
18

19 **All California based employees who were employed by Rockforce**
20 **Construction, LLC and were paid on an hourly basis, at any time during the**
21 **period from August 20, 2016 through the date when final judgment is entered**
22 **(the "Class Period").**
23

24 11. Plaintiff believe that there are at least 60 current and former employees in the Class.
25 Given Defendants' systemic failure to comply with California law regarding payment of
26 regular, overtime, and prevailing wages, the members of the Class are so numerous that joinder
27 of all members of the Class is impractical.
28

1 12. Plaintiff's claims are typical of the claims of the members of the Class, because
2 all Class Members are or were California employees of Defendants who were not paid all of their
3 regular, overtime, and/or prevailing wages, were not provided with meal break periods, were not
4 authorized or permitted to take 10 minute rest breaks, and were not paid appropriate sick pay,
5 during the Class Period, were not issued complete and accurate itemized wage statements,
6 and whose full social security number appeared on their itemized statements. Moreover,
7 Plaintiff are typical of Class Members who are no longer employed by Defendants because they
8 were not paid all wages due upon separation of employment. Plaintiff will fairly and adequately
9 represent the interests of the Class. Plaintiff have no conflict of interest with any member of the
10 Class. Moreover, Plaintiff retained counsel competent and experienced in complex, class
11 action litigation.

12 13. Common questions of law and fact exist as to all members of the Class, and
13 predominate over any questions solely affecting individual members of the Class. Among the
14 questions of law and fact common to Plaintiff and the Class are:
15

- 16 a. Whether Defendants failed to pay sick time at the regular rate of pay for Mr.
17 Weir and the Class in violation of Cal. Labor Code §246,
- 18 b. Whether the Company failed to pay regular and overtime wages for all hours
19 worked by Mr. Weir and other aggrieved employees for time spent working
20 through what should have been off-duty meal breaks, in violation of Cal.
21 Labor Code §§ 218 et seq., 510, 1194;
- 22 c. Whether Plaintiff and members of the Class were provided with and were
23 able to take 30 minute off-duty meal breaks by the fifth hour of the shift;
- 24 d. Whether Plaintiff and members of the Class were paid one hour of premium
25 pay for each day Defendants failed to provide a meal break;
- 26 e. Whether Plaintiff and members of the Class were authorized and permitted to
27 take 10 minute rest breaks for every 3.5 hours of work or major fraction
28

therein;

- f. Whether Plaintiff and members of the Class were paid one hour of premium pay for each day Defendants failed to authorize and permit a rest break;
- g. Whether Plaintiff and members of the Class who are former employees were paid all wages owed to them upon separation pursuant to Cal. Labor Code §§ 201-203;
- h. Whether Defendants issued itemized wage statements which failed to accurately state the actual hours and/or pay rates that Plaintiff and Class Members worked and the actual wages earned in violation of Cal. Labor Code § 226; and
- i. Whether the violations alleged in (a-g) above constitutes unfair business practices in violation of California's Unfair Competition Law, Section 17200 et seq. of the Business and Professions Code.

14. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individuals would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class Members are readily identifiable from Defendants' employee rosters and/or payroll records.¹

15. Defendants' actions are generally applicable to the entire Class. Prosecution of separate actions by individual members of the Class creates the risk of inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish incompatible standards

¹ Under California law, Defendants must keep payroll records for all employees for at least three years. See, Cal. Labor Code §1174(d).

1 of conduct for Defendants.

2 16. Because joinder of all members is impractical, a class action is superior to other
3 available methods for the fair and efficient adjudication of this controversy. Furthermore, the
4 amounts at stake for many members of the Class, while substantial, may not be sufficient to
5 enable them to maintain separate suits against Defendants.

6
7 **V. FACTUAL ALLEGATIONS**

8 17. Plaintiff and the members of the Class were employed as non-exempt
9 construction workers in California by Defendants at various times during the Class Period.
10 During the Class Period, Plaintiff, like the other members of the Class, typically worked as much
11 as ten to fifteen hours per day and from five to seven days per week, depending on the season.

12
13 **A. Facts Relevant to Defendants' Failure to Pay Sick Pay at the Regular**
14 **Rate of Pay**

15 18. Plaintiff and Class Members regularly worked on prevailing wage projects during
16 weeks in which they used paid sick time. On information and belief, their pay on prevailing
17 wage projects was \$48 per hour, which was significantly higher than the non-prevailing wage
18 rate of \$25 per hour. Despite the fact that Plaintiffs and Class Members mostly – if not always –
19 worked on prevailing wage projects during weeks in which they used paid sick time, Defendants
20 paid for the sick time using the *non*-prevailing wage rate, instead of using the regular rate of pay
21 of Plaintiff and Class Members. As a result, Defendants did not pay Plaintiff and Class Members
22 for all earned sick pay.

23 **B. Facts Relevant to Plaintiff Meal and Rest Breaks**

24 19. Defendants kept Plaintiff and Class Members busy with relentless work schedules
25 which did not allow them to stop to take meal or rest breaks. As a result of their unending job
26 duties and inability to take meal and rest breaks, Defendants failed to provide meal breaks to
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1 Plaintiff and Class Members throughout the Class Period, and also failed to authorize and permit
2 Plaintiff and Class Members to take rest breaks throughout the Class Period.

3 20. Defendants had Plaintiff and Class Members sign on-duty meal period
4 agreements. However, Defendants still failed to provide *on-duty* meal periods guaranteed by the
5 agreements, and failed to pay its employees for remaining on-duty. Moreover, despite
6 Defendants conceding that the nature of the work performed by Plaintiff and Class Members
7 prevents them from taking off-duty meal breaks, Defendants failed to secure any type of on-duty
8 rest period agreement. As a result of the rigorous work schedule and Defendants' directives,
9 Defendants failed to authorize and permit Plaintiff and Class Members to take 10 minute rest
10 breaks for each 3.5 hours of work or major fraction thereof.

11 21. During the Class Period, Defendants failed to pay one hour of premium pay for
12 each day that Plaintiff and Class Members were unable to take thirty-minute off-duty meal
13 breaks by the fifth hour and – in the case of Plaintiff and Class Members who signed on-duty
14 meal break agreements – Defendants failed to compensate them for each date on which they
15 were not provided with timely, thirty-minute paid on-duty meal breaks. Defendants also failed to
16 pay Plaintiff and Class Members one hour of premium pay for each day that they were neither
17 authorized nor permitted to take a 10 minute rest break.

18
19 C. **Facts Relevant to Defendants' Failure to Pay Regular and Overtime**

20 **Wages**

21 22. Defendants regularly instructed Plaintiff and Class Members to clock-out for
22 supposed meal breaks, but to keep working without pay. Defendants never paid Mr. Weir nor
23 Class Members for their regular and overtime wages accrued while working, but clocked-out at
24 Defendants' instruction.

25 ///

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1 **D. Facts Relevant to Defendants' Failure to Issue Accurate Itemized**
2 **Wage Statements and Waiting Time Penalties**

3 23. Defendants' failure to pay all regular and overtime wages owed, as well as their
4 failure to provide meal and rest breaks and/or one hour of premium pay for each day on which
5 they did not provide legally compliant meal and rest breaks to Plaintiff and Class Members also
6 resulted in Defendants issuing inaccurate itemized wages statements to Plaintiff and Class
7 Members.

8 24. The itemized wage statements incorrectly stated the hours worked and wages
9 owed to Plaintiff and Class Members for all work, and failed to pay and state payments of
10 premium pay for meal breaks which Defendants failed to provide, and for rest breaks which
11 Defendants failed to authorize and permit.

12 25. When Mr. Plaintiff – and the Class Members who separated from the Company
13 during the Class Period – separated from Defendants, Defendants failed to pay them all wages
14 owed them at the time of employment separation. Moreover, Defendants' refusal to pay all
15 wages owed to former employees continues, and none of Defendants' former employees who are
16 Class Members have been paid all wages owed, despite weeks, months, and years having passed
17 since their respective employment separations.
18

19
20 **VI. FIRST CAUSE OF ACTION**
21 **FAILURE TO REGULAR AND OVERTIME WAGES**
22 **(Cal. Labor Code §§ 510, 1194, 1194.2)**
23 **[On Behalf of Plaintiff and the Class]**

24 26. Plaintiff re-alleges and incorporates by reference each and every allegation set
25 forth in the preceding paragraphs.

26 27. Section 1194 of the Labor Code provides, in relevant part:
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1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage ... applicable to the employee is
3 entitled to recover in a civil action the unpaid balance of the full amount of this
4 minimum wage ... including interest thereon, reasonable attorney's fees, and costs
5 of suit.

6 28. Section 1194.2 of the Labor Code provides, in relevant part:

7 In any action under ... Section 1194 to recover wages because of the payment of a
8 wage less than the minimum wage fixed by an order of the commission, an
9 employee shall be entitled to recover liquidated damages in an amount equal to
10 the wages unlawfully unpaid and interest thereon.

11 29. Section 510(a) of the Labor Code states:

12 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
13 in one workday and any work in excess of 40 hours in any one workweek and the
14 first eight hours worked on the seventh day of work in any one workweek shall be
15 compensated at the rate of no less than one and one-half times the regular rate of
16 pay for an employee. Any work in excess of 12 hours in one day shall be
17 compensated at the rate of no less than twice the regular rate of pay for an
18 employee. In addition, any work in excess of eight hours on any seventh day of a
19 workweek shall be compensated at the rate of no less than twice the regular rate
20 of pay of an employee.

21
22 30. As noted above, Defendants regularly instructed Plaintiff and Class Members to
23 clock-out for supposed meal breaks, but to keep working without pay. Defendants never paid
24 Plaintiff and Class Members for their regular and overtime wages accrued while working, but
25 clocked-out at Defendants' instruction. Accordingly, pursuant to §1194 of the California Labor
26 Code, Plaintiff and the Class are entitled to recover wages for all their hours worked. To the
27 extent that the off-the-clock hours caused the total hours of Plaintiff and Class Members to
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1 exceed eight hours per day or forty hours per week, then Plaintiff and Class Members are entitled
2 to overtime pursuant to Cal. Labor Code § 510.

3 31. Further, pursuant to § 1194.2 of the California Labor Code, Plaintiff and the Class
4 are entitled to recover liquidated damages in an additional amount equal to the amount they are
5 entitled to under §1194.

6
7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL BREAKS**

9 **[Cal. Labor Code §§ 512, 226.7]**

10 **(On Behalf of Plaintiff and Class)**

11
12 32. Plaintiff re-alleges and incorporates by reference each and every allegation set
13 forth in the preceding paragraphs.

14 33. Under Section 11(A) of Industrial Welfare Commission Order 16-2001, codified
15 as California Code of Regulations, Title 8, Section 11010, Defendants are required to make
16 available and Plaintiff and the Class are entitled to take a thirty (30) minute off-duty meal period
17 in any work period of more than five (5) hours.

18 34. Under Labor Code Section 512, Defendants are prohibited from employing
19 Plaintiff and the Class for a work period of more than five (5) hours without making available to
20 its employees and Plaintiff a meal period of no less than thirty (30) minutes.

21 35. Moreover, Labor Code Section 226.7, subdivision (a), provides: "No employer
22 shall require any employee to work during any meal period mandated by applicable order of the
23 Industrial Welfare Commission."
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1 36. California courts interpreting Section 11(A) of the Wage Order, Section 512 of
2 the Labor Code, and Section 226.7 of the Labor Code have concluded that California employers
3 have a legal obligation to ensure that employees are free from *all* job duties for 30-minute meal
4 periods within the fifth and tenth hours of work. *See, Brinker Restaurant Corp. v. Superior Court*
5 *of San Diego County* (2012) 53 Cal.4th 1004, 1040 (an employer satisfies its obligation to
6 provide meal breaks only if it “relieves its employee of *all* duty, relinquishes control over their
7 activities, and permits them a reasonable opportunity to take an uninterrupted 30-minute meal
8 break, and does not impede or discourage them from doing so.” Emphasis added.)
9

10
11 37. Plaintiff and the Class are non-exempt employees entitled to the protections of the
12 Industrial Welfare Commission Orders mentioned herein, and Labor Code sections 512 et seq.
13 and 226.7.

14 38. During the course of Plaintiff’s and the Class Members’ employment, Defendants
15 failed to provide Plaintiff and the Class with mandated meal periods, and even required Plaintiff
16 and the Class to work during what should have been statutory meal periods, in violation of the
17 Industrial Welfare Commission Order mentioned herein, Labor Code Section 226.7, subdivision
18 (a), and Labor Code section 512.
19

20 39. Pursuant to Section 11 (D) of Industrial Welfare Commission Order 16-2001,
21 California Code of Regulations, Title 8, Section 11010, Defendants are required to pay Plaintiff
22 and the Class one additional hour of pay at Plaintiff’s and the Class’ regular rate of compensation
23 for each work day that the meal periods are missed by Plaintiff and the Class.
24

25 40. Under Labor Code section 226.7, subdivision (b), Defendants are required to pay
26 Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each work day
27 that the meal period was not provided.
28

1 41. Defendants willfully refused to pay Plaintiff and the Class compensation for
2 missed meal periods as required by the aforementioned statutes and regulations.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

5 **[Cal. Labor Code §§ 226.7]**

6 **(On Behalf of Plaintiff and Class)**

7
8 42. Plaintiff re-alleges and incorporates by reference each and every allegation set
9 forth in the preceding paragraphs.

10
11 43. California Labor Code § 226.7(a) provides, “No employer shall require any
12 employee to work during any meal or rest or recovery period mandated by an applicable order of
13 the Industrial Welfare Commission.”

14 44. IWC Order No. 16-2001(12)(A) provides, in relevant part: “Every employer shall
15 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
16 the *middle* of each work period. The authorized rest period time shall be based on the total hours
17 worked daily at the rate of ten (10) minutes net rest time per four hours or major fraction thereof.
18 However, a rest period need not be authorized for employees whose total daily work time is less
19 than three and one-half hours. Authorized rest period time shall be counted as hours worked for
20 which there shall be no deduction from wages.” Cal.Code Regs., tit. 8, § 11090(12)(A).

21
22 45. IWC Order No. 16-2001 (12)(B) further provides, “If an employer fails to provide
23 an employee with a rest period in accordance with the applicable provisions of this order, the
24 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
25 compensation for each workday that the rest period is not provided.” Cal.Code Regs., tit. 8,
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1 § 11090(12)(B).

2 46. As alleged herein, due to Defendants' rigorous scheduling and demand for
3 Plaintiff and Class Members to keep working and get the job done, Defendants never authorized
4 nor permitted Plaintiff and the Class Members to take a rest period.
5

6 47. By their actions in requiring their employees during the Class Period to work
7 through rest periods, thereby failing to authorize and permit the taking of timely rest periods by
8 employees, Defendants violated Section 12 of IWC Wage Order No. 16 and California Labor
9 Code § 226.7, and are thus liable to Plaintiff and the Class.
10

11 48. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
12 been deprived of timely rest periods, and are entitled to recovery under Cal. Labor Code
13 §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of
14 compensation for each work period during each day in which Defendants failed to provide
15 employees with timely and/or paid rest periods.
16

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PAY SICK PAY**

19 **[CAL. LABOR CODE § 246]**

20 **(On Behalf of Plaintiff and Class)**

21 49. Plaintiff re-alleges and incorporates by reference each and every allegation set
22 forth in the preceding paragraph.
23

24 50. California Labor Code § 246(b)(1) provides, in relevant part, "employee shall
25 accrue paid sick days at the rate of not less than one hour per every 30 hours worked."
26

27 51. California Labor Code § 246(l)(1) states that, "Paid sick time for
28 "nonexempt employees shall be calculated in the same manner as the regular rate of pay for the

1 workweek in which the employee uses paid sick time, whether or not the employee actually
2 works overtime in that workweek.”

3 52. Plaintiff and Class Members regularly worked on prevailing wage projects during
4 weeks in which they used paid sick time. Their pay on prevailing wage projects was
5 approximately \$48 per hour, which was significantly higher than the non-prevailing wage rate of
6 \$25 per hour.

7
8 53. Despite the fact that Plaintiffs and Class Members mostly – if not always –
9 worked on prevailing wage projects during weeks in which they used paid sick time, Defendants
10 paid sick time using the non-prevailing wage rate instead of using the regular rate of pay of
11 Plaintiff and Class Members, in violation of Cal. Labor Code §246. Plaintiff and Class Members
12 are thus still owed unpaid sick pay.

13 **FIFTH CAUSE OF ACTION**

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

15 **[Cal. Labor Code § 226, 226.3]**

16 **(On Behalf of Plaintiff and Class)**

17 54. Plaintiff re-alleges and incorporates by reference each and every allegation set
18 forth in the preceding paragraph.

19 55. California Labor Code § 226(a) requires that employers, when paying their non-
20 exempt employees’ wages, include an “itemized statement in writing showing” the “total hours
21 worked by the employee”, “all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate”, “the inclusive dates of the period
23 for which the employee is paid”, and “the name of the employee and only the last four digits of
24 his or her social security number.”

25 56. Cal. Labor Code § 226(2)(B) states:
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1 An employee is deemed to suffer injury for purposes of this subdivision
2 if the employer fails to provide accurate and complete information as
3 required by any one or more of items (1) to (9), inclusive, of subdivision
4 (a) and the employee cannot promptly and easily determine from the
5 wage statement alone one or more of the following:
6

7 (i) The amount of the gross wages or net wages paid to the
8 employee during the pay period or any of the other
9 information required to be provided on the itemized wage
10 statement.
11

12 (iv) The name of the employee and only the last four digits of
13 his or her social security number or an employee
14 identification number other than a social security number.
15

16 57. Labor Code § 226(e) provides that an employee suffering injury as a result of
17 a knowing and intentional failure to comply with 226(a) is entitled to recover \$50 for initial
18 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
19 to exceed \$4,000, as well as an award of costs and reasonable attorney's fee.
20

21 58. During the Class Period, Defendants failed to comply with § 226(a) of the California
22 Labor Code by issuing itemized wage statements to Plaintiff and Class Members which failed to
23 accurately state the number of hours worked, failed to state the correct amount of pay earned, failed to
24 state the correct rate of sick pay, and failed to include premium payments for meal break and rest
25 break violations.
26

27 59. Defendants' failure to comply with § 226(a)(1) was knowing and intentional.

28 60. Defendants' failure to provide Plaintiff and Class Members with accurate

1 itemized wage statements during the Class Period caused Plaintiff and Class Members to
2 incur economic damages in that they did not receive all regular, overtime, and prevailing wages
3 owed, and they were unable to determine from their itemized wage statements whether they had
4 been paid all wages owed. Plaintiff and the Class were further harmed since their wage
5 statements contained their entire social security number.
6

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PAY COMPENSATION DUE UPON**

9 **SEPARATION OF EMPLOYMENT**

10 **(Cal. Labor Code §§ 201-203)**

11 **[On Behalf of Plaintiff and the Class]**

12
13 61. Plaintiff re-allege the information set forth in all preceding paragraphs, as though
14 fully set forth and alleged herein.

15 62. Sections 201 and 202 of the California Labor Code require Defendants to pay all
16 compensation due and owing to former employees in California at or around the time each
17 employee's employment is terminated or ends. Section 203 of the California Labor Code
18 provides that if an employer willfully fails to pay compensation promptly upon discharge or
19 resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the
20 form of continued compensation up to thirty (30) work days.
21

22 63. Defendants willfully failed to pay and have still failed to pay Plaintiff and the
23 Class Members, who are former employees, for 1) their unpaid wages for sick time which they
24 accrued but were not paid due to Defendants' failure to pay sick time at the regular rate of pay;
25 2) wages for off-the-clock work during what should have been meal breaks; and 3) wages for
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1 unpaid meal and rest break premiums. Defendants knowingly and intentionally withheld these
2 wages.

3 64. As a result, Defendants are liable to Plaintiff and Class Members who are former
4 employees for penalties pursuant to California Labor Code §203.
5

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

8 **(Cal. Bus. & Prof. Code § 17200 et seq.)**

9 **[On Behalf of Plaintiff and the Class]**

10 65. Plaintiff re-allege the information set forth in all preceding paragraphs, as though
11 fully set forth and alleged herein.

12 66. California Business & Professions Code Section 17200 prohibits any unlawful,
13 unfair, or fraudulent business practices.

14 67. Labor Code section 90.5(a) states that it is the public policy of California to
15 enforce vigorously minimum labor standards in order to ensure employees are not required to
16 work under substandard and unlawful conditions, and to protect employers who comply with the
17 law from those who attempt to gain competitive advantage at the expense of their workers by
18 failing to comply with minimum labor standards.

19 68. Through its actions alleged herein, Defendants have engaged in unfair
20 competition within the meaning of Cal. Bus. & Prof. Code, §17200, because Defendants'
21 conduct has violated state wage and hour laws as herein described. Indeed, Defendants' conduct
22 as herein alleged has damaged Plaintiff and the Class Members by failing to pay wages for each
23 hour worked at the correct rate.
24

25 69. Beginning at a date unknown to Plaintiff, but at least as early as August 20, 2016,
26 Defendants committed, and continue to commit, acts of unfair competition, as defined in §17200,
27
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1 et seq. of the California Business and Professions Code by, among other things, engaging in the
2 acts and practices described above.

3 70. Defendants engaged in unfair competition in violation of Cal. Bus & Prof. Code,
4 §17200 et seq. by violating, inter alia, Cause of Action One, Two, Three, Four, and Six, as stated
5 above. Defendants' course of conduct, act and practice in violation of the California laws
6 mentioned in each paragraph above constitute separate and independent violations of 17200, et
7 seq. of the California Business and Professions Code.

8 71. Defendants' course of conduct, act and practice in violation of the California laws
9 mentioned in each paragraph above constitute separate and independent violations of 17200, et
10 seq. of the California Business and Professions Code.

11 72. The harm to Plaintiff and members of the Class by failing to pay wages for each
12 hour worked, failing to provide meal breaks, failing to authorize and permit rest breaks, failure to
13 pay sick pay at the regular rate of pay, and the failure to re pay all wages owed at the time of
14 separation, if any, of Defendants' policies/practices and, therefore, Defendants' actions described
15 herein constitute an unfair business practice or act within the meaning of California Business and
16 Professions Code §17200.

17 73. The unlawful, unfair and fraudulent business practices and acts of Defendants, as
18 described above, have injured Plaintiff and the Class, in that they have not been paid all their
19 wages for all their time worked, have not been paid meal and rest break premium payments, and
20 have not been paid waiting time penalties, and have not been paid all accrued sick pay.
21

22 **VII. JURY DEMAND**

23 74. Plaintiff hereby demand trial by jury of his and the proposed Class's claims
24 against Defendants.

25 **VIII. PRAYER FOR RELIEF**

26 Wherefore, Plaintiff, on behalf of himself and members of the Class pray for judgment
27 against Defendants as follows:
28

1 An Order than this action may proceed and be maintained as a class action on behalf of
2 the Class;

3 75. On the First Cause of Action:

4 (a) A declaratory judgment that Defendants violated Labor Codes §§ 510,
5 1194, 1194.2, et seq. by failing to pay Plaintiff and the Class Members all
6 wages owed for regular and overtime; and

7 (b) An award to Plaintiff and Class Members in the amount of their unpaid
8 regular and overtime wages owed to them, plus liquidated damages in an
9 additional amount equal to the unpaid wages during the Class Period, as
10 well as an award of costs, interest, and reasonable attorney's fees;

11 76. On the Second Cause of Action:

12 (a) A declaratory judgment that Defendants violated California Labor Code
13 § 226.7, § 512, and the IWC Wage Order No. 16-2001;

14 (b) An award of wages to Plaintiff and the Class Members for meal periods
15 which Defendants did not provide during the Class Period;

16 (c) An award of all accrued interest from the date that the wages were due and
17 payable at the legal interest rate; and

18 (d) Attorneys' fees and costs pursuant to all sources of law providing the
19 same.

20 77. On the Third Cause of Action:

21 (a) A declaratory judgment that Defendants violated California Code § 226.7
22 and the IWC Wage Order No. 16-2001;

23 (b) Pursuant to Cal. Labor Code § 226.7 and IWC Wage Order No. 16,
24 Section 12, an award to Plaintiff and the Class Members for an additional
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1 hour of pay at the employee's regular rate of compensation for each day
2 that rest periods were not authorized, permitted, or untimely during the
3 Class Period;

4 (c) An award of all accrued interest from the date that the wages were due and
5 payable at the legal interest rate; and
6

7 (d) An award to Plaintiff and the Class of reasonable attorneys' fees and costs
8 pursuant to all sources of law providing for same.
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10 78. On the Fourth Cause of Action:

11 (a) A declaratory judgment that Defendants violated Cal. Labor Code §246;

12 (b) An award of all unpaid sick pay to Plaintiff and Class Members, as well
13 an award of all accrued interest from the date that the wages were due and
14 payable at the legal interest rate; and

15 (c) An award to Plaintiff and the Class of reasonable attorneys' fees and costs
16 pursuant to all sources of law providing for same.

17 79. On the Fifth Cause of Action:

18 (a) A declaratory judgment that Defendants violated Labor Code §§ 226 and
19 226.3 by issuing inaccurate weekly wage statements to Plaintiff and the
20 Class Members as set forth above, and as though fully set forth here;

21 (b) An award to Plaintiff and the Class of \$50 for each initial pay period
22 during the Class Period in which a violation of § 226 occurred and \$100
23 for each subsequent pay period in which a violation of § 226 occurred, not
24 to exceed \$4,000 per person, as well as an award of costs and reasonable
25 attorneys' fees;
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1 80. On the Sixth Cause of Action:

- 2 (a) A declaratory judgment that Defendants have violated California Labor
3 Code §§ 201-203;
- 4 (b) Pursuant to Cal. Labor Code §§ 201-203, an award to Plaintiff and Class
5 Members who are no longer employed by Defendants for waiting time
6 penalties in the amount of 30 days of wages; and
- 7 (c) An award to Plaintiff of reasonable attorneys' fees and costs.

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9 81. On the Seventh Cause of Action:

- 10 (a) An Order requiring Defendants, its agents, servants, and employees, and
11 all persons acting, directly or indirectly, in concert with them, to restore
12 and disgorge all funds to each member of the Class acquired by means of
13 any act or practice declared by this Court to be unlawful, unfair or
14 fraudulent and therefore constituting unfair competition under § 17200, et
15 seq. of the Cal. Business and Professions Code;
- 16 (b) Restitution, including, but not limited to, the relief permitted pursuant to
17 Labor Code §§ 1194, 1194.2, 510, 1720, et seq.; and
- 18 (c) An award to Plaintiff and the Class Members of their attorneys' fees and
19 costs of suit to the extent permitted by law, including, but not limited to,
20 Cal. Code of Civil Procedure §§ 1021.5, and Labor Code §§ 218 and/or
21 1194.

22
23 82. All other relief as this Court deems proper.

24 Dated: August 19, 2020

Respectfully submitted,

MICHAEL MALK, ESQ. APC

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26
27 By:  _____

Michael Malk
Counsel for Plaintiff and the Class