

FILED BY FAX

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11 on behalf of himself and similarly situated employees

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

CHAZ PEREZ, on behalf of himself and
similarly situated employees,

Plaintiff,

vs.

TOO INFINITY MANAGEMENT, LLC, a
California Limited Liability Company;
HUMBLE ROOT INTERNATIONAL, INC.,
a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO,
an individual; JUSTIN JACINTO, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00285276

FIRST AMENDED COMPLAINT:

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act Claims
(Labor Code § 2699 et seq.)

DEMAND FOR JURY TRIAL

Plaintiff CHAZ PEREZ, on behalf of himself and all other similarly situated employees
(hereinafter collectively referred to as "Plaintiff"), hereby files this Class Action Complaint against
Defendants HUMBLE ROOT INTERNATIONAL, INC., a California Corporation; JAVIER
HERNANDEZ, an individual; CHRIS THAO, an individual; JUSTIN JACINTO, an individual; and
DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information
and belief, Plaintiff alleges the following:

FILED
Superior Court Of California,
Sacramento
05/18/2021
rsanmiguel
By _____, Deputy
Case Number:
34-2020-00285276

INTRODUCTION

1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff and similarly situated employees seeking unpaid overtime and minimum wages, unpaid meal and rest period premiums, unpaid reimbursement expenses, wage statement violations, failure to pay timely wages, and unfair competition. Plaintiff seeks these unpaid wages and associated penalties, plus interest and attorneys' fees, on behalf of himself and similarly situated employees.

JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 7.

3. Venue is proper pursuant to Civil Procedure Code sections 395(a), and 395.5, in that Defendants reside in Sacramento County. In addition, some of the wrongful acts and violations of law asserted herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento County. *See Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately July 2, 2020. Plaintiff provided facts and legal basis for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The July 2, 2020 notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include but are not limited to the following: All non-exempt employees who are currently working or have worked for Defendants from July 2, 2019 through judgment.

PARTIES

5. Plaintiff CHAZ PEREZ is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges HUMBLE ROOT INTERNATIONAL, INC. is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that JAVIER HERNANDEZ is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that JAVIER HERNANDEZ is an owner, director, officer, and/or managing agent of, HUMBLE ROOT INTERNATIONAL, INC., responsible for causing the violations of the California Labor Code asserted in this Complaint. As such JAVIER HERNANDEZ is individually liable pursuant to California Labor Code section 558.1.

8. Plaintiff is informed and believes, and thereupon alleges, that CHRIS THAO is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that CHRIS THAO is an owner, director, officer, and/or managing agent of HUMBLE ROOT INTERNATIONAL, INC., responsible for causing the violations of the California Labor Code asserted in this Complaint. As such CHRIS THAO is individually liable pursuant to California Labor Code section 558.1.

9. Plaintiff is informed and believes, and thereupon alleges, that JUSTIN JACINTO is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that JUSTIN JACINTO is an owner, director, officer, and/or managing agent of HUMBLE ROOT INTERNATIONAL, INC., responsible for causing the violations of the California Labor Code asserted in this Complaint. As such JUSTIN JACINTO is individually liable pursuant to California Labor Code section 558.1.

10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

1 11. At all times mentioned herein, each Defendant was the agent or employee of each of
2 the other Defendants and was acting within the course and scope of such agency or employment.
3 The Defendants are jointly and severally liable to Plaintiff.

4 12. Defendants, and each of them, are now and/or at all times mentioned in this
5 Complaint, were members of and/or engaged in a joint employment, joint venture, partnership and
6 common enterprise, and were acting within the course and scope of, and in pursuance of said joint
7 employment, joint venture, partnership and common enterprise.

8 13. Defendants, and each of them, now and/or at all times mentioned in this Complaint,
9 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

10 14. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
11 wrongs, complaints, injuries and/or damages alleged in this Complaint.

12 **CLASS ALLEGATIONS**

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

16
17 All hourly non-exempt employees who have or continue to work for Defendants in California
18 at any time four (4) years prior to the filing of this Action and up to the date this matter is
19 certified as a class action.

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

23 (a) **Numerosity**: The Plaintiff Class is so numerous that the individual joinder of all members is
24 impracticable under the circumstances of this case. While the exact number of class
25 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
26 Defendants have employed as many as one hundred (100) individuals falling within the
27 above stated class definition throughout the State of California during the applicable statute
28 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.

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

- 4 (1) Whether Defendants paid Plaintiff and members of the putative class for all hours
5 worked.
- 6 (2) Whether Defendant paid Plaintiff and members of the putative class at least minimum
7 wage for all hours worked;
- 8 (3) Whether Defendants properly paid Plaintiff and members of the putative class for all
9 overtime hours worked;
- 10 (4) Whether Plaintiff and members of the putative class worked over eight (8) hours in a
11 day;
- 12 (5) Whether Plaintiff and members of the putative class worked over forty (40) hours in a
13 week;
- 14 (6) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
15 members of the putative class for all hours worked;
- 16 (7) Whether Defendants had a policy and/or practice of failing to pay Plaintiff and
17 members of the putative class for all overtime hours worked;
- 18 (8) Whether Defendants had a policy and/or practice allowing for or providing Plaintiff
19 and members of the putative class meal periods as required by law;
- 20 (9) Whether Defendants had a policy and/or practice allowing for or providing Plaintiff
21 and members of the putative class rest periods as required by law;
- 22 (10) Whether Defendants accurately stated all required information on paystubs issued to
23 Plaintiff and members of the putative class;
- 24 (11) Whether Defendants had a policy and/or practice that provided reimbursement of
25 business expenses owed to Plaintiff and members of the putative class; and
- 26 (12) Whether Defendants provided Plaintiff and members of the putative class their final
27 wages in compliance with Labor Code sections 201 to 203.
28

1 (c) **Typicality**: Plaintiff's claims are typical of the claims of the members of the putative class.
2 He also sustained damages arising out of Defendants' common course of conduct in violation
3 of the law as complained of herein. Plaintiff and all members of the putative class were non-
4 exempt employees who were not paid for all hours worked and were not provided all legally
5 mandated meal and rest periods, because of Defendants' policies and practices resulting in a
6 failure to pay all overtime wages, minimum wages, and meal and rest period premiums.
7 Additionally, Defendants failed to provide any sick leave to Plaintiff and similarly situated
8 employees. Further, Defendants issued Plaintiff and all members of the putative class wage
9 statements that did not comply with Labor Code section 226. Defendants also failed to pay
10 Plaintiff and all members of the putative class all reimbursement expenses incurred. As a
11 result, each putative class member will have the same basis for unpaid wage claims as does
12 Plaintiff.

13 (d) **Adequacy**: Plaintiff will fairly and adequately protect the interests of the members of the
14 putative class. For all relevant times, Plaintiff resided in California, worked for Defendants
15 in California, and is an adequate representative of the putative class as he has no interests that
16 are adverse to those of absent class members. Additionally, Plaintiff has retained counsel
17 who has substantial experience in complex civil litigation and wage and hour matters.

18 (e) **Superiority**: A class action is superior to other available means for the fair and efficient
19 adjudication of the controversy since individual joinder of all members of the class is
20 impracticable. Class action treatment will permit a larger number of similarly situated
21 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
22 without the unnecessary duplication of effort and expense that numerous individual actions
23 would engender. Further, as damages suffered by each individual member of the class may
24 be relatively small, the expenses and burden of the individual litigation would make it
25 difficult or impossible for individual members of the class to redress the wrongs done to
26 them, and an important public interest will be served by addressing the matter as a class
27 action. The cost to the court system of adjudication of such individualized litigation would
28

1 be substantial. Individualized litigation would also present the potential for inconsistent or
2 contradictory judgments.

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

5 **GENERAL ALLEGATIONS**

6 18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully
7 set forth herein.

8 19. Plaintiff worked for Defendants from November 2019 to March 2020. Defendants jointly
9 own and operate a marijuana online retail business that sells and delivers marijuana to customers.
10 Plaintiff worked as a courier for Defendants. He delivered marijuana in the Sacramento, Stockton, and
11 Tracy area. Plaintiff regularly drove to Tracy and other towns to deliver marijuana to Defendants'
12 customers. Plaintiff and similarly situated employees typically worked six (6) to eight (8) hours per day
13 and, and between thirty (30) and forty (40) hours per week. Plaintiff and similarly situated employees
14 sometimes worked over eight (8) hours per day and over forty (40) hours per week.

15 20. Defendants failed to pay Plaintiff and similarly situated employees for all hours worked.
16 Plaintiff and similarly situated employees were underpaid because Defendants failed to pay for all hours
17 worked. Defendants rounded any work time and this negatively impacted Plaintiff and similarly situated
18 employees. In addition, the delivery cars were parked about one (1) mile from the work site.
19 Sometimes, prior to clocking in, Plaintiff and similarly situated employees would drive to the parking
20 area to pick up the delivery cars. Defendants did not pay Plaintiff and similarly situated employees for
21 the time they spent driving to the delivery car prior to clocking in. Further, Defendants did not pay
22 Plaintiff and similarly situated employees for all overtime hours worked.

23 21. Moreover, Plaintiff and similarly situated employees missed many meal periods and took
24 late meal periods. Plaintiff missed many meal periods and took many meal periods after the fifth hour
25 of work because of Defendants' policies. Defendants' meal period policy is defective and contributed to
26 many late meal periods. Also, staff shortage and delivery schedules caused Plaintiff to miss and take
27 late meal periods. Due to the delivery schedule, Plaintiff sometimes had to eat while working. For
28 example, he would pick up food at a gas station while putting gas in his delivery vehicle. Defendants

1 called Plaintiff on his phone if Defendants noticed through their monitoring application or GPS device
2 that Plaintiff stopped at a customer's site or somewhere longer than usual. Defendants put pressure on
3 Plaintiff and similarly situated employees to work as fast as possible. Such policies also resulted in
4 many missed rest breaks for Plaintiff and similarly situated employees. Defendants' policies
5 discouraged rest breaks and penalized Plaintiff and similarly situated employees for taking their rest
6 breaks. For example, on one occasion, Plaintiff was falling asleep while driving. As a result, he pulled
7 over to get a coffee and to take a rest break. However, Defendants were notified from the monitoring
8 device that Plaintiff had stopped his car at a drive through. As a result, Defendants called Plaintiff and
9 told him that he would be written up for taking a rest break and stopping at a drive through.

10 22. Further, Defendants did not reimburse Plaintiff and similarly situated employees for
11 using their cell phones for work purposes. Plaintiff and similarly situated employees used their cell
12 phones to talk to the dispatcher, for directions, and for delivery routes when their work cell phones had
13 problems or were not charged. Plaintiff and similarly situated employees would drive their own cars to
14 pick up the delivery cars. Defendants, however, did not reimburse Plaintiff and similarly situated
15 employees for using their own cars for work purposes, such as picking up delivery cars that were parked
16 one (1) mile away from the work location.

17 23. Additionally, Defendants failed to authorize Plaintiff and similarly situated employees to
18 take their sick leave. Defendants did not tell Plaintiff and similarly situated employees how many sick
19 days they were entitled to. In fact, when Plaintiff was hired, Defendants told him that he does not get
20 any sick time. Moreover, Defendants marked him as having an unexcused absence even when Plaintiff
21 had a doctor's note excusing him from work. Defendants discouraged Plaintiff and similarly situated
22 employees from taking sick days. Defendants told Plaintiff and similarly situated employees that taking
23 sick days would negatively affect their attendance record. At times, Plaintiff and similarly situated
24 employees reported to work even when they were sick.

25 24. As a result of Defendants' rounding policy, failure to pay minimum wages, failure to pay
26 overtime wages, failure to pay reimbursement expenses, and failure to pay meal and rest period
27 premiums, Defendants failed to provide all final wages owed to Plaintiff and similarly situated
28 employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their

1 resignation. In addition, Defendants failed to keep accurate time records and failed to provide Plaintiff
2 and similarly situated employees with accurate wage statements. The wage statements Defendants
3 provided to Plaintiff and similarly situated employees did not accurately state their total regular hours
4 worked, gross wages and net wages, all deductions made, and the full address of the legal entity that is
5 the employer. The address on Plaintiff's paystubs does not state the city where the employer legal entity
6 is located. Consequently, the wage statements were defective.

7 25. At all times during Plaintiff and similarly situated employees' employment relationship
8 with Defendants, JUSTIN JACINTO, CHRIS THAO, and JAVIER HERNANDEZ were Defendants'
9 co-owners. As a result, all had authority and control over Plaintiff and similarly situated employees'
10 hours worked, wages, job duties, and other terms and conditions of employment. All Defendants
11 demonstrated control over all Plaintiffs wages earned and job duties. It is Plaintiff's understanding that
12 each and all of them had the authority to hire and/or fire employees of Defendants. JUSTIN JACINTO,
13 CHRIS THAO, and JAVIER HERNANDEZ are and/or were owners, officers, directors, and
14 shareholders of Defendants. They developed, maintained, implemented, and caused the unlawful wage
15 and hour practices described herein to occur.

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PAY OVERTIME WAGES**
19 **(As to all Defendants)**

20 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
21 set forth herein.

22 27. During the period Plaintiff was employed by Defendants, Defendants were required to
23 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
24 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
25 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 7, section (3)(A);*
26 *Cal. Lab. Code §§ 510, 1194.*

27 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
28 and/or forty (40) hours per week on several occasions while employed by Defendants. However,

1 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
2 worked at the regular rate of pay.

3 29. Plaintiff and similarly situated employees were not exempt from overtime protections
4 under the California Wage Orders and Labor Code.

5 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **(As to all Defendants)**

11 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
12 set forth herein.

13 32. For the period preceding the filing of this Complaint, Defendants were required to
14 compensate Plaintiff with at least California's applicable minimum for every hour worked. *See MW-*
15 *Order 2019; IWC Wage Order, No. 7, section 4(A); Cal. Lab. Code § 1194.*

16 33. Plaintiff and similarly situated employees were not exempt to the State's Minimum Wage
17 Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but
18 failed to do so. Indeed, Defendants were aware that their rounding policy and other policies outlined
19 above resulted in a forfeiture of wages and unpaid, off-the-clock work.

20 34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
21 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
22 the extent pertinent as if set forth here in full.

23 **THIRD CAUSE OF ACTION**
24 **MEAL PERIOD VIOLATIONS**
25 **(As to all Defendants)**

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

28 36. An employer must provide an employee a meal period in accordance with the
applicable Wage Order, and California Labor Code sections 226.7 and 512.

37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 7, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. California Labor Code section 512 and Wage Order No. 7 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

39. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiffs worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiffs to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

40. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal periods.

41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully set forth herein.

43. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

1 44. California Labor Code section 226.7 and Wage Order No. 7, section 12(A) require an
2 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
3 four (4) hours or a major fraction thereof.

4 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
5 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
6 they worked more than four (4) hours or a major fraction thereof.

7 46. Defendants further failed to pay Plaintiff and similarly situated employees the
8 applicable rest period premiums for any such missed rest periods.

9 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
10 employees have been damaged as stated in the section below entitled "DAMAGES," which is
11 incorporated here to the extent pertinent as if set forth here in full.

12 **FIFTH CAUSE OF ACTION**
13 **WAGE STATEMENT VIOLATIONS**
14 **(As to all Defendants)**

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

17 49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
18 statement to an employee, semimonthly or at the time of each payment of wages, showing:

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

years at the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's total hours worked due to Defendants' rounding policy and other policies stated above that resulted in off-the-clock work. Plaintiff was not able to promptly and easily determine his total hours worked from their paystubs alone. Additionally, Plaintiff suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully set forth herein.

53. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

54. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. See Cal. Lab. Code § 202.

55. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

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

1 57. Defendants knew of their obligation to pay Plaintiff's final wages when their employment
2 terminated. Indeed, Defendants were aware that their rounding policy and other policies outlined above
3 resulted in a forfeiture of wages and unpaid, off-the-clock work. Such conduct shows Defendants had
4 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
5 remaining wages owed.

6 58. As a proximate result of the Defendants' conduct, Plaintiff and similarly situated
7 employees have been damaged and deprived of wages and thereby seek the daily rate of pay multiplied
8 by thirty (30) days for Defendants' failure to pay all wages due.

9
10 **SEVENTH CAUSE OF ACTION**
 FAILURE TO REIMBURSE EXPENSES
 (As to all Defendants)

11 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
12 set forth herein.

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

18 61. Defendants required Plaintiff and similarly situated employees to use their personal
19 phones when their work phone were having problems, or were out of batteries, in order to communicate
20 with the dispatcher for delivery routes and directions to customers' homes. Defendants also required
21 Plaintiff and similarly situated employees to use their vehicles to pick up Defendants' delivery vehicles
22 but failed to reimburse them for such use.

23 62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
24 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
25 the extent pertinent as if set forth here in full.

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EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION

(As to Defendants HUMBLE ROOT INTERNATIONAL, INC., and DOES 1 to 100)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. 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 California Business and Professions ("B&P") Code § 17200.

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

66. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully set forth herein.

69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other aggrieved current and former employees:

- Violation of Labor Code sections 1194, 1197.1, and Wage Order No. 7, § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code section 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code sections 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code sections 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code section 558 and 558.1 (Violation of Provision Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code sections 226.3 and 1174 (Failure to Maintain Accurate Time Records);
- Violation of Labor Code sections 510 and 1194 Wage Order No. 7, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code section 226.7, 512 and Wage Order No. 7, §§ 12(A) and 12(B) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 2802 (Failure to Pay Reimbursement for Expenses); and
- Violation of Labor Code sections 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave).

70. Plaintiff has received authorization, based on the LWDA's failure to send notice of its intent to pursue Plaintiff's claims and based on Defendants' failure to cure Plaintiff's claims, to act on behalf of the Labor Commissioner to assess civil penalties against Defendants.

71. Plaintiff seeks civil penalties against Defendants pursuant to Labor Code section 2699(f)(2) to the extent there is no enumerated penalty provision for the specific sections cited above.

72. Plaintiff seeks these civil penalties on behalf of himself and all other former and current employees from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;

- 1 2. As to the First Cause of Action:
- 2 a. Wages in an amount to be proven at trial;
- 3 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 4 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 5 Code section 1194;
- 6 3. As to the Second Cause of Action:
- 7 a. Wages in an amount to be proven at trial;
- 8 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 9 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
- 10 Code section 1194;
- 11 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 12 4. As to the Third Cause of Action:
- 13 a. Wages in an amount to be proven at trial;
- 14 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 15 section 1021.5;
- 16 5. As to the Fourth Cause of Action:
- 17 a. Wages in an amount to be proven at trial;
- 18 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 19 section 1021.5;
- 20 6. As to the Fifth Cause of Action:
- 21 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 22 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 23 violation occurred and one hundred dollars (\$100.00) per employee for each
- 24 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 25 (\$4,000.00);
- 26 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 27 226(e);
- 28

1 7. As to the Seventh Cause of Action:

- 2 a. An amount to be proven at trial;
- 3 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

4 8. As to the Ninth Cause of Action:

- 5 a. For civil penalties as provided for in the Labor Code for each
- 6 enumerated violation;
- 7 b. For those Labor Code sections, the violation of which there is no civil penalty
- 8 provided, the default penalty provided in Labor Code section 2699(f): for any
- 9 initial violation, one hundred dollars (\$100) for each aggrieved employee per
- 10 pay period; For any subsequent violation, two hundred dollars (\$200) for each
- 11 aggrieved employee per pay period;
- 12 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 13 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 14 Court;

15 9. For such other and further relief as this Court may deem just and proper,

16 including, but not limited to:

- 17 a. Wages as proved at trial;
- 18 b. Injunctive and Declaratory relief;
- 19 c. Attorney's fees and costs as provided for by law; and
- 20 d. Interest.

21

22 Dated: May 11, 2021

Shimoda Law Corp.

23

24 By: 

25 Galen T. Shimoda

26 Justin P. Rodriguez

27 Brittany V. Berzin

28 Jessica L. Hart

 Attorneys for Plaintiff

1 *Perez v Too Infinity Management, LLC, et al.*
2 *Sacramento Superior Court Case No. 34-2020-00285276*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party
7 to the within above-entitled action.

8 On May 18, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint

10 Laura C. McHugh (SBN 180930)
11 Samantha J. Tanner (SBN 314952)
12 **Duggan McHugh Law Corporation**
13 641 Fulton Ave, Suite 100
Sacramento, CA 95825
Phone: (916) 550-5309
Fax: (916) 404-5900
Email: laura@dugganmchugh.com
samantha@dugganmchugh.com
jason@dugganmchugh.com

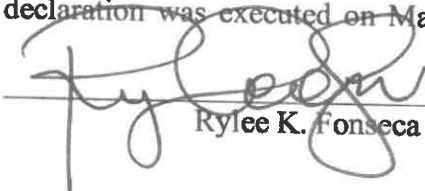
14 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
15 processing of correspondence for mailing with the United States Postal
16 Service and that each day's mail is deposited with the United States Postal
17 Service that same day in the ordinary course of business. On the date set forth
18 above, I served the aforementioned document(s) on the parties in said action
by placing a true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

19 [] [By Personal Service] By personally delivering a true copy thereof to the
20 office of the addressee above.

21 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
22 shown above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
24 personally delivered via the following overnight courier service: _____.

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct, and that this declaration was executed on May 18, 2021, at Elk
27 Grove, California.

28 
Rylee K. Fonseca