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

SEP 28 2020

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Attorneys for Plaintiff Salvador Salamanca, on behalf of himself
and others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10 SALVADOR SALAMANCA, on behalf of
11 himself and others similarly situated,

12 Plaintiff,

13 v.

14 AIRTECH INTERNATIONAL, INC., a
15 California corporation; and DOES 1 through
16 100,

17 Defendants.

Case No. **CIV DS 2020465**

CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Failure to Provide Accurate Itemized Employee Wage Statements
6. Failure to Pay All Wages Owed Timely and upon Separation of Employment
7. Violation of Labor Code § 1174(d)
8. Violation of Business & Professions Code §§ 17200, et seq.
9. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Salvador Salamanca, an individual, (“Plaintiff”), on behalf of himself, the State
2 of California, and all others similarly situated, alleges and complains of defendants Airtech
3 International, Inc., a California corporation, and DOES 1 through 100 (collectively,
4 “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action pursuant to California Code of Civil Procedure section 382
7 on behalf of Plaintiff and the following class: *All current and former hourly paid or non-exempt*
8 *employees who worked for Airtech International, Inc., and/or its predecessor or merged entities,*
9 *within the State of California from four years prior to the filing of the Complaint and continuing*
10 *to the present* (the “Class” or “Class Members”).

11 2. Throughout the time period involved in this case, Defendants willfully maintained
12 a consistent policy of failing to pay all wages, including minimum wages, for all hours worked;
13 failing to pay all overtime wages; failing to provide timely duty-free meal periods; failing to
14 authorize and permit duty-free rest breaks; failing to maintain and provide accurate itemized
15 wage statements; and failing to pay all wages owed timely and upon separation of employment.
16 Defendants’ illegal conduct has also given rise to derivative claims for unfair business practices
17 and violation of the Private Attorneys General Act of 2004 (“PAGA”).

18 3. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
19 to California Business & Professions Code sections 17200 through 17208, also seeks all monies
20 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled.
21 Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal
22 and equitable relief allowed, plus interest, attorneys’ fees and costs.

23 4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees
24 (the “Aggrieved Employees”), also brings this representative action against Defendants to
25 recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled
26 to retain the services of counsel to file this action to protect his interests and those of Aggrieved
27 Employees and has thereby incurred attorneys’ fees and costs, which he is entitled to recover
28 under Labor Code section 2699.

1 5. For purposes of the allegations set forth herein, Class Members, along with
2 Aggrieved Employees comprising the PAGA representative action, are collectively referred to
3 as “Employees” except as otherwise specified.

4 **II. JURISDICTION AND VENUE**

5 6. This Court has subject matter jurisdiction over all causes of action asserted herein
6 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
7 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
8 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
9 arises under the laws of the State of California or is subject to adjudication in the courts of the
10 State of California.

11 7. This Court has personal jurisdiction over Defendants because each has caused
12 injuries in San Bernardino County and the State of California through their acts, and by their
13 violation of the California Labor Code, California state common law, and California Business &
14 Professions Code sections 17200, *et seq.* Defendants also transact business throughout California
15 and have obtained the benefits of the laws of the United States and the State of California and
16 are therefore subject to the personal jurisdiction of this Court.

17 8. Venue as to each defendant is proper in this judicial district, pursuant to Code of
18 Civil Procedure section 395. Defendants operate within California and do business within San
19 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and
20 Employees within the State of California and San Bernardino County.

21 9. This case should be classified as complex according to California Rules of Court,
22 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action;
23 will involve substantial documentary evidence and a large number of witnesses; is likely to
24 involve extensive motion practice raising difficult or novel issues that will be time-consuming to
25 resolve; and would require substantial post judgment judicial supervision.

26 **III. PARTIES**

27 10. Plaintiff Salvador Salamanca is a resident of Fontana, California. At all relevant
28 times herein, Defendants employed Plaintiff as a non-exempt, hourly paid machine operator until

his separation on March 24, 2020, at its distribution facility located in Chino, California and subjected him to the same employment policies and practices that affected Employees.

11. Plaintiff is informed and believes, and based thereon alleges, that Defendant Airtech International, Inc., is a California corporation.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are engaged throughout this county and the State of California. During the relevant period, Defendants employed Plaintiff and Employees within the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

14. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall include DOES 1 through 100 identified herein.

15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and Employees, at the same time and were operating as a joint enterprise and single entity at all relevant time periods.

16. California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment

1 to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
2 California's labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
3 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
4 person to work or exercises control over the wages, hours, or working conditions of any person
5 may be liable for violations of the California Labor Code as to that person.

6 17. California law also permits and recognizes the piercing of a corporate veil
7 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App.
8 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise
9 rule applies where "there are two or more personalities, there is but one enterprise; and that this
10 enterprise has been so handled that it should respond, as a whole, for the debts of certain
11 component elements of it." *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
12 App. 4th at 512.

13 18. At all times throughout their employment, Plaintiff and Employees were regularly
14 and consistently subject to the common policies and practices utilized by Defendants.

15 19. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
16 Employees to perform services from which they benefitted. Moreover, the aforementioned
17 entities had the right to exercise control over the wages, hours, and/or working conditions over
18 Plaintiff and Employees at all relevant times herein, so as to be considered joint employers. By
19 reason of their status as joint employers, they are each liable for civil penalties for violation of
20 the California Labor Code as to Plaintiff and Aggrieved Employees as set forth herein.

21 **IV. FACTUAL BACKGROUND**

22 **Defendants Systematically Violated State Wage and Hour Laws**

23 20. Defendants employ approximately 300 individuals in the State of California.
24 Defendants manufacture and distribute vacuum bagging and composite tooling materials.
25 Plaintiff worked for Defendants as a non-exempt, hourly paid machine operator until his
26 separation on March 24, 2020, in Chino, California.

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1 21. Plaintiff and Employees are nonexempt employees pursuant to the applicable
2 IWC Wage Order.¹ This action seeks recovery for wages and compensation due and owing to
3 Plaintiff and Employees under California laws for the maximum period allowed to the present,
4 as set out herein.

5 22. Labor Code section 510 requires an employer to compensate an employee who
6 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
7 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
8 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
9 compensate employees at no less than twice the regular rate of pay when an employee works
10 more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day
11 of work.

12 23. During the relevant period, Defendants have had a consistent policy of failing to
13 pay overtime wages to Plaintiff and Employees for all overtime hours worked. The work times
14 of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours per day
15 and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and Employees
16 wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees were
17 deprived wages at the overtime premium amounts applicable to overtime hours.

18 24. By their common policy of requiring Plaintiff and Employees to work in excess
19 of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
20 them at the applicable overtime rate of pay, Defendants willfully violated the provisions of Labor
21 Code sections 510 and 1198, as well as IWC Wage Order No. 4-2001.

22 25. Throughout the applicable period of time, Defendants did not pay and continue
23 not to pay Employees at least the California minimum wage for all hours worked, violating Labor
24 Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and Class Members are
25 entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum
26 wages.

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28 ¹ Upon information and belief, Plaintiff alleges that IWC Wage Order No. 4-2001 is applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable IWC Wage Orders determined to be relevant after discovery.

1 26. Defendants regularly failed to provide Plaintiff and Employees with timely duty-
2 free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001 require
3 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal
4 period within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53
5 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”).
6 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
7 second thirty (30) minute uninterrupted and duty-free meal period.

8 27. Defendants regularly denied Plaintiff and Employees meal periods that comply
9 with Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001. By way of example, on
10 numerous occasions, first meal breaks were not timely provided in that Plaintiff and Employees
11 would have to work over five (5) hours without receiving a meal break. In addition, meal breaks
12 were often less than thirty (30) minutes because Plaintiff and Employees were asked by
13 Defendants and expected to work during meal periods. Plaintiff and Employees were not allowed
14 to leave workplace premises for their meal periods. Plaintiff and Employees thus suffered late,
15 short, interrupted, and/or missed meal breaks. Also, despite working shifts that exceeded ten
16 hours, Plaintiff and Employees were consistently deprived of second meal breaks altogether.

17 28. Defendants were also obligated but failed to provide Plaintiff and Employees with
18 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
19 worked as required by Labor Code section 226.7 and IWC Wage Order No. 4-2001. Defendants
20 regularly failed to provide Plaintiff and Employees with timely duty-free rest breaks.

21 29. In addition to failing to authorize and permit compliant meal and rest periods,
22 Plaintiff and Employees were not compensated with one (1) hour’s worth of pay at their regular
23 rate of compensation when they were not provided with compliant meal and rest periods in
24 accordance with Labor Code section 226.7(b).

25 30. Labor Code section 203 provides “if an employer willfully fails to pay...any
26 wages of an employee who is discharged or who quits, the wages of the employee shall continue
27 as a penalty...” for up to 30 days. Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th
28 487, 492.

1 31. Due to Defendants’ non-compliant policies described herein, Plaintiff and
2 Employees whose employment with Defendants concluded were not compensated for all
3 straight-time and overtime hours worked and were not paid all meal and rest break premiums
4 owed. Thus, Defendants have failed to pay Plaintiff and Employees all wages owed, whose sums
5 were certain, at the time of termination or within seventy-two (72) hours of their resignation and
6 have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section
7 203.

8 32. Labor Code section 204 expressly requires that “[a]ll wages...earned by any
9 person in any employment are due and payable twice during each calendar month, on days
10 designated in advance by the employer as the regular paydays.” Pursuant to Labor Code section
11 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly
12 or semimonthly payroll if the wages are paid not more than seven calendar days following the
13 close of the payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for all
14 straight-time and overtime hours worked, Defendants failed to timely pay Plaintiff and
15 Employees within seven (7) days of the close of the payroll period in accordance with Labor
16 Code section 204 on a regular and consistent basis.

17 33. Through Labor Code section 210 and the PAGA, and to the extent permitted by
18 law, Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of
19 Labor Code section 204.

20 34. Plaintiff and Employees were not furnished with accurate itemized wage
21 statements that accurately showed their gross wages earned, net wages earned, premium
22 payments for meal and rest breaks, all applicable hourly rates and corresponding number of hours
23 worked at each hourly rate in effect during their pay periods, and other information required by
24 Labor Code section 226(a).

25 35. During the relevant period, Defendants have knowingly and intentionally failed
26 to provide Plaintiff and Employees with the above-described writing through actions alleged
27 herein in violation of Labor Code section 226. Plaintiff and Employees have been injured by
28 Defendants’ intentional violation of Labor Code section 226(a) because they were denied both

1 their legal right to receive, and their protected interest in receiving, accurate itemized wage
2 statements.

3 36. In addition, because Defendants failed to provide the accurate and mandated
4 information on the itemized wage statements, Plaintiff and Employees have been prevented by
5 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
6 underpayment. Plaintiff has had to file this lawsuit and will be required to conduct discovery and
7 perform computations in order to analyze whether, and to what extent, Plaintiff and Employees
8 suffered underpayment, thereby causing Plaintiff to incur expenses and time lost. Thus, Plaintiff
9 and Class Members are owed the amounts provided for in Labor Code section 226(e).

10 37. Further, for the violations described above, Plaintiff and Aggrieved Employees
11 may also recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for
12 Defendants' violations of Labor Code section 226(a).

13 38. Additionally, Plaintiff and Employees have been denied their legal right and
14 protected interest in having available at a central location at the plant or establishment where they
15 are employed, accurate and complete payroll records showing the hours worked daily by, and the
16 wages paid to, Employees at those respective locations pursuant to Labor Code section 1174.
17 Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and Aggrieved Employees may
18 also recover civil penalties for violation of Labor Code section 1174(d).

19 39. Based on the foregoing, Defendants have also engaged in unlawful and unfair
20 business practices in violation of California's Business and Professions Code sections 17200, *et*
21 *seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, and/or
22 other equitable remedies.

23 V. CLASS ACTION ALLEGATIONS

24 40. Plaintiff brings this action on behalf of himself and all others similarly situated,
25 as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a
26 proposed class comprised of and defined as follows:

27 *All current and former hourly paid or non-exempt employees who worked for*
28 *Airtech International, Inc., and/or its predecessor or merged entities, within the*

1 *State of California from four years prior to the filing of the Complaint and*
2 *continuing to the present* (again, “Class” or “Class Members”).

3 41. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b), to
4 amend or modify the class description identified herein with greater specificity or further division
5 into subclasses or limitation to particular issues.

6 42. This action has been brought and may properly be maintained as a class action
7 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
8 community of interest in the litigation and the Class is easily ascertainable.

9 **A. Numerosity**

10 43. The potential members of the Class as defined are so numerous that joinder of all
11 the members of the Class is not practicable. While the precise number of Class Members has not
12 been determined at this time, Plaintiff is informed and believes that there are over three hundred
13 (300) Class Members employed by Defendants within the State of California at any given time.
14 Accounting for employee turnover during the relevant periods necessarily increases this number
15 substantially.

16 44. Plaintiff alleges Defendants’ employment records would provide information as
17 to the number and location of all Class Members.

18 **B. Commonality**

19 45. There are questions of law and fact common to the Class that predominate over
20 any questions affecting only individual Class Members. These common questions of law and fact
21 include, without limitation:

- 22 a. Whether Defendants’ failure to pay wages, without abatement or
23 reduction, in accordance with the California Labor Code, was willful;
- 24 b. Whether Defendants failed to pay at least the minimum wage to Class
25 Members for all hours worked;
- 26 c. Whether Defendants required Class Members to work over eight (8) hours
27 per day and/or over forty (40) hours per week and failed to pay the legally
28 required overtime compensation to Class Members;

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- d. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members for all hours worked in violation of California law;
- e. Whether Defendants deprived Class Members of legally compliant meal and rest periods;
- f. Whether Defendants required Class Members to work during meal and/or rest periods without compensation;
- g. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members premium payments for noncompliant (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- h. Whether Defendants failed to timely pay all wages due to Class Members during their employment;
- i. Whether Defendants failed to pay all wages due to Class Members within the required time upon their discharge or resignation;
- j. Whether Defendants complied with wage reporting as required by the California Labor Code, including, *inter alia*, section 226;
- k. Whether Defendants kept complete and accurate payroll records as required by the Labor Code, including, *inter alia*, section 1174(d);
- l. Whether Defendants' conduct was willful or reckless;
- m. Whether Defendants engaged in unfair business practices in violation of the Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;
- n. Whether Employees are entitled to compensatory damages pursuant to the California Labor Code;
- o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law;
- p. Whether Class Members are entitled to attorneys' fees and costs; and
- q. Whether Class Members are entitled to interest.

1 **C. Typicality**

2 46. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
3 Members sustained injuries and damages arising out of and caused by Defendants' common
4 course of conduct in violation of laws and regulations that have the force and effect of law and
5 statutes, as alleged herein.

6 **D. Adequacy of Representation**

7 47. Plaintiff will fairly and adequately represent and protect the interest of the Class.
8 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
9 wage and hour class actions, and have the financial resources to litigate the claims at issue.

10 **E. Superiority of Class Action**

11 48. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the Class has been damaged and is entitled to
15 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
16 minimum wages and/or overtime for all hours worked, failing to provide timely duty-free meal
17 periods and/or pay premiums owed thereon, failing to authorize and permit duty-free rest breaks
18 and/or pay premiums owed thereon, failing to maintain and provide accurate itemized wage
19 statements, failing to pay all wages owed in a timely manner, failing to pay all wages due upon
20 termination and/or resignation, and engaging in unfair business practices.

21 49. Class action treatment will allow those similarly situated persons to litigate their
22 claims in a manner that is most efficient and economical for the parties and the judicial system.
23 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
24 action that would preclude its maintenance as a class action.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY MINIMUM WAGES**

27 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and IWC Wage Order No. 4-2001**

28 **[On Behalf of Plaintiff and the Class against All Defendants]**

50. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

51. Throughout the period of time applicable to this cause of action, Defendants did not pay and continue to not pay Plaintiff and Class Members at least the California minimum wage for all hours worked, thereby violating Labor Code section 1194 and IWC Wage Order No. 4-2001.

52. Defendants' failure to pay Plaintiff and Class Members the minimum wage as required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation, as well as interest, costs, and attorney's fees and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

Cal. Labor Code §§ 510 and 1198 and IWC Wage Order No. 4-2001

[On Behalf of Plaintiff and the Class against All Defendants]

53. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

54. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek...shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

55. Pursuant to Section 3 of IWC Wage Order No. 4-2001, an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40)

1 hours in any workweek. Further, an employer must compensate employees at no less than twice
2 the regular rate of pay when an employee works more than twelve (12) hours in a day or more
3 than eight (8) hours on the seventh consecutive day of work.

4 56. At all times mentioned, Plaintiff and the Class regularly worked shifts that
5 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
6 workweek and were not paid proper overtime wages for all overtime hours worked as a result of,
7 but not limited to, Defendants' failure to pay for work performed off the clock, including, *inter*
8 *alia*, pre- and post- shift, as well as during meal periods.

9 57. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8)
10 hours per day and/or forty (40) hours per week without properly compensating them overtime
11 wages, as described above, Defendants willfully violated the provisions of Labor Code section
12 1194.

13 58. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been
14 deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of
15 such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 **Cal. Labor Code §§ 226.7, 512, and IWC Wage Order No. 4-2001**

19 **[On Behalf of Plaintiff and the Class against All Defendants]**

20 59. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
21 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
22 fully alleged herein.

23 60. Labor Code section 226.7 provides "an employer shall not require an employee
24 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
25 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")."
26 Similarly, Labor Code section 512 and IWC Wage Order No. 4-2001 require employers to
27 provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the
28 first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042

1 (“Accordingly, first meal periods must start after no more than five hours.”) Moreover, an
2 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
3 minute uninterrupted and duty-free meal period.

4 61. Despite these legal requirements, Defendants regularly failed to provide both first
5 and second meal periods that comply with Labor Code sections 512, 226.7, and IWC Wage Order
6 No. 4-2001. Plaintiff and Class Members were not provided timely and duty-free thirty (30)
7 minute meal periods. Plaintiff and Class Members often experienced untimely and interrupted
8 meal periods, and sometimes missed meal breaks altogether. Specifically, Plaintiff and Class
9 Members did not always receive timely duty-free meal periods in that first meals would be taken
10 after the fifth hour of work, Plaintiff and Class Members would not be allowed off the workplace
11 premises during meal periods, meal periods were interrupted, or, on occasion, the demands of
12 employee job duties were such that they were prevented from taking a meal period altogether.
13 Having been thus subjected to late, short, interrupted, and missed meal periods, Plaintiff and
14 Class Members did not receive their statutorily mandated meal periods.

15 62. To the extent Defendants claim that Plaintiff and Class Members waived their
16 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
17 applicable to those occasions when Plaintiff and Class Members worked shifts in excess of twelve
18 (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period agreements
19 where the nature of the work does not prevent them from being relieved of all duties.

20 63. Under Labor Code section 226.7 and IWC Wage Order No. 4-2001, Plaintiff and
21 each Class Member is entitled to be paid one (1) hour of additional wages for each day he or she
22 was not provided with all required meal periods. Defendants regularly failed to pay Plaintiff and
23 Class Members the additional wages to which they were entitled for non-compliant meal periods.

24 64. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
25 hour of additional wages for each workday a compliant meal period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

3 **Cal. Labor Code § 226.7 and IWC Wage Order No. 4-2001**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 65. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 66. Under Wage Order No. 4-2001, section 12, an employer must authorize and
9 permit all employees to take ten (10) minute duty free rest periods for every major fraction of
10 four hours worked. Labor Code section 226.7 provides “an employer shall not require an
11 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

13 67. Defendants are required by California law to authorize and permit breaks of ten
14 (10) uninterrupted minutes for each four hours of work or major fraction thereof (i.e., more than
15 two hours). That is, the required number of rest breaks is equal to the number of work hours
16 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
17 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
18 Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
19 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
20 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure
21 to authorize rest breaks as so required is itself a violation of California’s rest break laws.

22 68. Despite these legal requirements, Defendants failed to authorize and permit
23 Plaintiff and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members
24 were subject to policies/practices that prevented them from taking legally compliant rest periods.
25 Defendants did not relieve Plaintiff and Class Members of all duties during their rest breaks and
26 regularly required them to be available to continue working – or, in fact, interrupted them –
27 during their rest breaks. Notwithstanding any formal written policy to the contrary, Defendants’
28 actual custom and business practice was to undermine any formal policy of permitting rest breaks

1 by pressuring Class Members to perform their duties in a way that omitted breaks, including, but
2 not limited to, scheduling a heavy workload that made taking breaks extremely difficult,
3 maintaining an informal anti-rest break policy enforced through ridicule or reprimand, and
4 exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging
5 the skipping of legally protected breaks. Here, as a companywide practice and in fact, Defendants
6 did not offer Plaintiff and Class Members the opportunity to receive compliant off-duty rest
7 periods and, thus, “the court may not conclude employees voluntarily chose to skip...breaks.”
8 *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410 (“[i]f an employer
9 fails to provide legally compliant meal or rest breaks, the court may not conclude employees
10 voluntarily chose to skip those breaks.”); *accord Brinker* 53 Cal. 4th at 1033 (“No issue of waiver
11 ever arises for a rest break that was required by law but never authorized; if a break is not
12 authorized, an employee has no opportunity to decline to take it.”)

13 69. Moreover, Plaintiff and Class Members were prohibited from leaving the
14 premises during their shifts while on the clock. As a result, Defendants retained control over
15 Plaintiff and Class Members during their rest periods. *See, Augustus v. ABM Security Services,*
16 *Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers must relieve
17 employees of all duties and relinquish control over how employees spend their time.”). In
18 *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-duty
19 rest period to employees who worked as security guards and further explained “that employers
20 [must] relinquish any control over how employees spend their break time, and relieve their
21 employees of all duties.” *Id.* at 273. During breaks employers must relieve employees of all
22 duties and relinquish control over how employees spend their time.

23 70. Plaintiff and Class Members were not compensated with one (1) hour’s worth of
24 pay at their regular rate of compensation when they were not provided with a compliant rest
25 break in accordance with Labor Code section 226.7(b).

26 71. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour
27 of additional of pay at their regular rates of compensation for each work day when a compliant
28 rest break was not provided, in a sum to be proven at trial.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

3 **Cal. Labor Code §§ 226 and 226.3**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 72. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
6 reference all of the allegations contained in the preceding paragraphs as though fully set forth
7 herein.

8 73. Labor Code section 226(a) requires employers, semi-monthly or at the time or each
9 payment of wages, to furnish employees an accurate itemized statement in writing showing:

- 10 (1) gross wages earned;
- 11 (2) total hours worked by the employee;
- 12 (3) the number of piece-rate units earned and any applicable piece rate if the
13 employee is paid on a piece rate;
- 14 (4) all deductions, provided that all deductions made on written orders of the
15 employee may be aggregated and shown as one item;
- 16 (5) net wages earned;
- 17 (6) the inclusive dates of the period for which the employee is paid;
- 18 (7) the name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social
20 security number;
- 21 (8) the name and address of the legal entity that is the employer...; and
- 22 (9) all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee....

24 74. During the relevant time period, due to Defendants' failure to, *inter alia*, provide
25 Plaintiff and Class Members with lawful meal periods and rest breaks (and pay missed meal and
26 rest break premiums thereon), along with the failure to pay minimum and overtime wages, the
27 wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross
28 wages earned, the correct total hours worked, the correct net wages earned, or the applicable

and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9).

75. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorneys' fees.

76. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery and mathematical computations to determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct time and pay records, and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not have had to engage in these efforts and incur these costs had Defendants provided accurate wage statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

77. Thus, Plaintiff and Class Members have been injured by Defendants' intentional violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

78. Plaintiff and Class Members are thus entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee pursuant to Labor Code section 226(e), and/or any other allowable penalties including those pursuant to Labor Code section 226.3.

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1 in any employment between the 16th and the last day, inclusive, of any calendar month, other
2 than those wages due upon termination of an employee, are due and payable between the 1st and
3 10th day of the following month. Section 204 also requires that all wages earned for labor in
4 excess of the normal work period shall be paid no later than the payday for the next regular
5 payroll period.

6 84. The requirements of Labor Code section 204 shall be deemed satisfied by the
7 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
8 than seven calendar days following the close of the payroll period when the wages were earned.

9 85. During the relevant time period, Defendants failed to pay Plaintiff and Class
10 Members all wages due to them within any time period specified by Labor Code section 204
11 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
12 rest break premiums.

13 86. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
14 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
15 imposes upon Defendants for each subsequent violation, or any willful or intentional violation,
16 of failure to pay the wages of each employee a penalty of \$200.00, plus 25% of the amount
17 unlawfully withheld.

18 87. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil
19 Code sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys'
20 fees and the costs incurred by him in this action, along with pre-judgment interest on all amounts
21 recovered herein, as well as any statutory penalties Defendants may owe under the California
22 Labor Code and/or any other statute.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 1174(d)**

25 **[On Behalf of Plaintiff and the Class against All Defendants]**

26 88. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
27 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
28 fully alleged herein.

89. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

90. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Plaintiff and Class Members.

91. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.

92. More specifically, Plaintiff and Class Members have been injured by Defendants' intentional and willful violation of Labor Code section 1174(d) because they were denied both their legal right and protected interest in having available, accurate, and complete payroll records pursuant to Labor Code section 1174(d).

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION LAW VIOLATIONS

Cal. Business & Professions Code §§ 17200, *et seq.*

[On Behalf of Plaintiff and the Class against All Defendants]

93. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

94. The Unfair Competition Law (“UCL”), California Business & Professions Code sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code section 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

1 95. The statute of limitations for a claim under the UCL is four years. Accordingly,
2 the actionable period for this cause of action is four years prior to the filing of this Complaint
3 through the present, and on-going until the violations are corrected, and/or the Class is certified.

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

9 97. A violation of Business and Professions Code sections 17200, *et seq.* may be
10 predicated upon the violation of any state or federal law. Defendants' policies and practices have
11 violated state law in at least the following respects:

12 (a) Requiring Plaintiff and Class Members to work without paying them minimum
13 wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and IWC
14 Wage Order No. 4-2001;

15 (b) Requiring Plaintiff and Class Members to work overtime without paying them
16 proper compensation in violation of Labor Code sections 510, 1198, and IWC Wage Order No.
17 4-2001;

18 (c) Failing to provide timely duty-free meal periods and to authorize and permit duty-
19 free rest breaks in violation of Labor Code sections 226.2, 226.7, 512, and IWC Wage Order No.
20 4-2001;

21 (d) Failing to timely pay all wages to Plaintiff and Class Members during their
22 employment and upon separation of employment, in violation of Labor Code sections 201, 202,
23 203, 204, and 210; and

24 (e) Failing to maintain and provide Plaintiff and Class Members with accurate
25 itemized wage statements, in violation of Labor Code section 226.

26 Thus, Defendants engaged in unlawful competition in violation of section 17200, *et seq.*
27 of the California Business & Professions Code by violating sections 201, 202, 203, 204, 210,
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226, 226.2, 226.7, 510, 512, 1194, 1194.2, and 1197 of the Labor Code and IWC Wage Order No. 4-2001.

98. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff and Class Members have suffered economic injuries. Defendants' conduct has damaged Plaintiff and Class Members by wrongfully denying them all wages and failing to pay all meal and rest breaks premiums owed, along with the corresponding interest, in a timely manner and upon separation, and while supplying them inaccurate and misleading wage statements. Such conduct is substantially injurious to Plaintiff and Class Members.

99. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish a greater foothold in the marketplace. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of section 17200 of the California Business & Professions Code.

100. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing of this Complaint through the date of such restitution, at rates specified by law. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

101. Defendants' course of conduct, acts, and practices in violation of the California laws mentioned above constitute independent violations of section 17200, *et seq.* of the California Business & Professions Code.

102. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to California Business & Professions Code section 17202.

103. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of himself and Class Members previously or presently employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing

1 this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
2 appropriate pursuant to Code of Civil Procedure section 1021.5.

3 **NINTH CAUSE OF ACTION**

4 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

5 **Cal. Labor Code §§ 2698, *et seq.***

6 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

7 104. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
8 incorporates by reference all of the allegations contained in the previous paragraphs of this
9 Complaint as though fully set forth herein.

10 105. Plaintiff, on behalf of himself and Aggrieved Employees, brings this
11 representative action against Defendants to recover wages and penalties pursuant to the Private
12 Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

13 106. Based on the above allegations incorporated by reference, Defendants have
14 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1174,
15 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well as IWC Wage Order No. 4-2001.

16 107. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
17 section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210,
18 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, as well
19 as IWC Wage Order No. 4-2001.

20 108. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation,
21 Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
22 of trial subject to the following formula:

23 \$100.00 for the initial violation per employee per pay period; and

24 \$200.00 for each subsequent violation per employee per pay period.

25 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
26 Development Agency ("LWDA") and twenty-five percent (25%) to the affected employees.

27 These penalties may be stacked separately for each of Defendants' violations of the California
28 Labor Code.

109. On July 1, 2020, Plaintiff gave written notice to the LWDA and by certified mail to Defendant Airtech International, Inc. of the specific code provisions alleged to have been violated and paid the required filing fee. The LWDA has not provided notice of its intent to investigate the alleged violations within sixty-five (65) calendar days of the postmark date of the aforesaid letter.

110. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one year period before Plaintiff filed notice with the LWDA of his intent to bring an action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the LWDA.

111. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the hourly wage made by Plaintiff and Class Members for each noncompliant meal period for which premium pay was not paid, as may be proven;

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1 5. For compensatory damages in the amount of the hourly wage made by Plaintiff
2 and Class Members for each day of noncompliant rest breaks for which premium pay was not
3 paid, as may be proven;

4 6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
5 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as
6 may be proven;

7 7. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
8 Plaintiff and Class Members, as may be proven;

9 8. For restitution for unfair competition pursuant to the California Business &
10 Professions Code sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

11 9. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00
12 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the
13 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the
14 Private Attorneys General Act of 2004;

15 10. For all civil penalties available under section 210 of the Labor Code and the
16 Private Attorneys General Act of 2004;

17 11. For all civil penalties available under section 226.3 of the Labor Code and the
18 Private Attorneys General Act of 2004;

19 12. For all civil penalties available under section 1174.5 of the Labor Code and the
20 Private Attorneys General Act of 2004;

21 13. For all civil penalties available under section 1197.1 of the Labor Code and the
22 Private Attorneys General Act of 2004;

23 14. For an order enjoining Defendants and their agents, servants, and employees, and
24 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
25 duties adumbrated in this complaint;

26 15. For an award of pre-judgment and post-judgment interest;

27 16. For an award providing for the payment of the costs of this suit;

28 17. For an award of attorneys' fees, to the extent provided by law; and

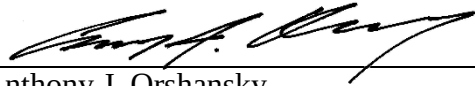
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18. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

DATED: September 25, 2020

COUNSELONE, PC

By 
Anthony J. Orshansky
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

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