

JUN 23 2021

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behalf of himself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JESUS R. GONZALEZ, on behalf of himself
and all others similarly situated and aggrieved,

Plaintiffs,

v.

TOTAL EDUCATION SOLUTIONS, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 20STCV37984

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. CIVIL PENALTIES UNDER LABOR CODE § 210;
10. CIVIL PENALTIES UNDER LABOR CODE § 226.3;
11. VIOLATION OF LABOR CODE § 558;
12. VIOLATION OF LABOR CODE § 1197.1; and
13. CIVIL PENALTIES UNDER LABOR CODE § 2699

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff JESUS R. GONZALEZ ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure section 382 and Labor Code section 2698, *et seq.*, on behalf of Plaintiff and all other current and former similarly situated or aggrieved non-exempt California employees employed by or formerly employed by TOTAL EDUCATION SOLUTIONS, INC., a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("TOTAL EDUCATION"), THE INSTITUTE FOR THE REDESIGN OF LEARNING, a California corporation, and any of its respective subsidiaries or affiliated companies within the State of California ("INSTITUTE" and, with TOTAL EDUCATION and DOES 1 through 100, as further defined below, "Defendants").

PARTIES

A. Plaintiff

2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, driving students to and from school, cleaning and washing vehicles, vehicle inspections, and maintenance. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately April of 2014 and worked through approximately October of 2019.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant TOTAL EDUCATION is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

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1 4. Plaintiff is informed and believes and based thereon alleges that defendant
2 INSTITUTE is, and at all times relevant hereto was, a corporation organized and existing under and
3 by virtue of the laws of the State of California and doing business in the County of Los Angeles,
4 State of California.

5 5. The true names and capacities, whether individual, corporate, associate, or otherwise,
6 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
7 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
8 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
9 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
10 Plaintiff will seek leave of court to amend this Second Amended Complaint to reflect the true names
11 and capacities of the defendants designated hereinafter as DOES when such identities become
12 known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in
13 all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
14 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
15 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
16 "Defendants," it shall include TOTAL EDUCATION, INSTITUTE, and any of its parent,
17 subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100
18 identified herein.

19 **JOINT LIABILITY ALLEGATIONS**

20 6. Plaintiff is informed and believes and based thereon alleges that all the times
21 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
22 representative, joint venture or co-conspirator of each of the other defendants, either actually or
23 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
24 employment, joint venture, and conspiracy.

25 7. All of the acts and conduct described herein of each and every corporate defendant
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate
27 employers, and the officers and management-level employees of said corporate employers. In
28 addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 8. Plaintiff is further informed and believes that he performed work duties and tasks for
7 INSTITUTE, but was paid (or purportedly paid) by TOTAL EDUCATION.

8 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
9 thereon alleges that Defendants, and each of them, are joint employers.

10 JURISDICTION

11 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
12 of Civil Procedure section 410.10.

13 11. Venue is proper in Los Angeles County, California pursuant to Code of Civil
14 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
15 causes of action complained of herein arose; the county in which the employment relationship
16 began; the county in which performance of the employment contract, or part of it, between Plaintiff
17 and Defendants was due to be performed; the county in which the employment contract, or part of
18 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
19 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
20 and Class Members in Los Angeles County, and because Defendants employ numerous Class
21 Members in Los Angeles County.

22 12. Plaintiff is also an "aggrieved employee" under PAGA, as he was employed by
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code
24 violations set forth herein. Other aggrieved employees Plaintiff seeks to represent are all other non-
25 exempt employees of Defendants. Accordingly, Plaintiff seeks to recover, on behalf of himself and
26 all other current and former non-exempt employees of Defendants ("other aggrieved employees"),
27 the civil penalties provided by PAGA plus reasonable attorneys' fees and costs, as the term "civil
28 penalty" is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175.

13. Plaintiff also seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

14. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of herself and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

15. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On or around July 28, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant TOTAL EDUCATION of the specified provisions of the Labor Code alleged to have been violated by it. On or around March 2, 2021, Plaintiff filed an amended written notice with the LWDA which further added INSTITUTE as a defendant. Plaintiff provided this amended notice to both Defendants. The LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the July 28, 2020 postmarked or the March 2, 2021 post-marked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

16. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action were tolled from April 6, 2020 until October 1, 2020.

FACTUAL BACKGROUND

17. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours

1 worked on the seventh consecutive work day in a work week by, among other things, failing to
2 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting
3 employees to work off the clock, including without limitation, for time spent moving vehicles;
4 failing to pay overtime at the proper rate of pay, including but not limited to, by paying straight pay
5 instead of overtime pay; and failing to pay for split shift premiums to the detriment of Plaintiff and
6 Class Members.

7 18. For at least four (4) years prior to the filing of this Action and continuing to the
8 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
9 or some of them, in violation of California state wage and hour laws as a result of, among other
10 things, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering,
11 or permitting employees to work off the clock, including without limitation, for time spent moving
12 vehicles; and failing to pay split shift premiums to the detriment of Plaintiff and Class Members.

13 19. For at least four (4) years prior to the filing of this Action and continuing to the
14 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
15 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
16 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
17 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
18 for such unprovided meal periods as required by California wage and hour laws.

19 20. For at least four (4) years prior to the filing of this action and continuing to the
20 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
21 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
22 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
23 California wage and hour laws.

24 21. For at least three (3) years prior to the filing of this action and continuing to the
25 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
26 full amount of their wages owed to them upon termination and/or resignation as required by Labor
27 Code sections 201 and 202.

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1 22. For at least one (1) year prior to the filing of this Action and continuing to the present,
2 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
3 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
4 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate; and other such information as required by Labor Code section
6 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
7 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

8 23. For at least three (3) years prior to the filing of this action and continuing to the
9 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
10 costs incurred in laundering mandatory work uniforms and purchasing tools necessary to perform
11 work duties, including, but not limited to, flashlights and cleaning supplies.

12 24. At all relevant times mentioned herein, Defendants, at times, failed to provide
13 Plaintiff and aggrieved employees with, or permit them inspection of, records pertaining to their
14 employment, including wage statements and similar payroll documents under Labor Code section
15 226, documents signed to obtain or hold employment under Labor Code section 432, personnel
16 records under Labor Code section 1198.5, and time records under Labor Code section 1174, to the
17 detriment of Plaintiff and all other aggrieved employees.

18 25. At all relevant times mentioned herein, Defendants have had a policy or practice of
19 failing to pay employees their wages in accordance with Labor Code Section 204, which requires
20 that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be
21 paid for between the 16th and 26th day of the month during which the labor was performed, and
22 labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid
23 for between the 1st and 10th day of the following month."

24 26. At all relevant times mentioned herein, Defendants have had a policy or practice of
25 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
26 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved
27 employees with the rates of pay and overtime rates of pay applicable to their employment;
28 allowances claimed as part of the minimum wage; the regular payday designated by Employers; the

1 name, address, and telephone number of the workers' compensation insurance carrier; information
2 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
3 under Labor Code section 2810.5.

4 27. At all relevant times mentioned herein, Plaintiff is informed and believes Defendants
5 failed to provide Plaintiff and other aggrieved employees with the amount of paid sick leave required
6 to be provided pursuant to California law (including, without limitation, Labor Code section 246, *et*
7 *seq.*) and also did not permit its use upon request as contemplated under California laws, to the
8 detriment of Plaintiff and all other aggrieved employees.

9 28. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, brings this action
10 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.3,
11 226.7, 246 *et seq.*, 432, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 2699, 2802, 2810.5, and
12 California Code of Regulations, Title 8, section 11040, seeking overtime wages, minimum wages,
13 payment of premium wages for missed meal and rest periods, waiting time penalties, wage statement
14 penalties, failure to indemnify work-related expenses, other such provisions of California law, and
15 reasonable attorneys' fees and costs.

16 29. Plaintiff, on Plaintiff's own behalf and on behalf of all other similarly situated
17 employees, pursuant to Business and Professions Code sections 17200 through 17208, also seeks
18 (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the
19 establishment of appropriate and effective means to prevent further violations, as well as all monies
20 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled,
21 as well as restitution of amounts owed.

22 **CLASS ACTION ALLEGATIONS**

23 30. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
24 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
25 and former non-exempt employees of Defendants within the State of California at any time
26 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
27 of the class action is provided to the class (collectively referred to as "Class Members").

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1 31. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
2 to amend or modify the class description with greater specificity, further divide the defined class
3 into subclasses, and to further specify or limit the issues for which certification is sought.

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

7 **A. Numerosity**

8 33. The potential Class Members as defined are so numerous that joinder of all the
9 members of the Class is impracticable. While the precise number of Class Members has not been
10 determined yet, Plaintiff is informed and believes that there are over ninety (90) Class Members
11 employed by Defendants within the State of California.

12 34. Accounting for employee turnover during the relevant periods necessarily increases
13 this number. Plaintiff alleges Defendants' employment records would provide information as to the
14 number and location of all Class Members. Joinder of all members of the proposed Class is not
15 practicable.

16 **B. Commonality**

17 35. There are questions of law and fact common to Class Members. These common
18 questions include, but are not limited to:

- 19 A. Did Defendants violate Labor Code sections 510, 1194, and 1197 by failing to
20 adequately track, and therefore adequately pay, wages for all time worked by Class
21 Members?
- 22 B. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
23 worked at a proper overtime rate of pay?
- 24 C. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
25 for all other time worked at the employee's regular rate of pay and a rate of pay that
26 is greater than the applicable minimum wage?
- 27 D. Did Defendants violate Labor Code section 512 by not authorizing or permitting
28 Class Members to take compliant meal periods?

- 1 E. Did Defendants violate Labor Code section 226.7 by not providing Class Members
2 with additional wages for missed or interrupted meal periods?
- 3 F. Did Defendants violate applicable Wage Orders by not authorizing or permitting
4 Class Members to take compliant rest periods?
- 5 G. Did Defendants violate Labor Code section 226.7 by not providing Class Members
6 with additional wages for missed rest periods?
- 7 H. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
8 Members upon termination or resignation all wages earned?
- 9 I. Are Defendants liable to Class Members for waiting time penalties under Labor Code
10 section 203?
- 11 J. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
12 Class Members with accurate wage statements?
- 13 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
14 losses incurred in direct consequence of the discharge of their duties or by obedience
15 to the directions of Defendants as required under Labor Code section 2802?
- 16 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
17 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 18 M. Are Class Members entitled to restitution of wages under Business and Professions
19 Code section 17203?
- 20 N. Are Class Members entitled to costs and attorneys' fees?
- 21 O. Are Class Members entitled to interest?

22 **C. Typicality**

23 36. The claims of Plaintiff herein alleged are typical of those claims which could be
24 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
25 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
26 damages arising out of and caused by Defendants' common course of conduct in violation of laws
27 and regulations that have the force and effect of law and statutes as alleged herein.

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1 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
2 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
3 pay.”

4 44. Four (4) years prior to the filing of the Complaint in this Action through the present,
5 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
6 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
7 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
8 result of, including but not limited to, Defendants , failing to accurately track and/or pay for all
9 minutes actually worked; engaging, suffering, or permitting employees to work off the clock,
10 including without limitation, for time spent moving vehicles; failing to pay overtime at the proper
11 rate of pay, including but not limited to, by paying straight pay instead of overtime pay; and failing
12 to pay for split shift premiums to the detriment of Plaintiff and Class Members.

13 45. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
14 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
15 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
16 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
17 applicable IWC Wage Orders, and California law.

18 46. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
19 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
20 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194
21 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

22 **SECOND CAUSE OF ACTION**

23 **(Failure to Pay Minimum Wages – Against All Defendants)**

24 47. Plaintiff realleges and incorporates by reference all of the allegations contained in
25 the preceding paragraphs as though fully set forth hereat.

26 48. At all relevant times, Plaintiff and Class Members were employees or former
27 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

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1 63. California law and applicable Wage Orders require that employers “authorize and
2 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
3 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
4 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
5 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
6 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
7 thirty (30) minutes of paid rest period.

8 64. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
9 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
10 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s
11 regular rate of compensation for each work day that the rest period is not provided.

12 65. For four (4) years prior to the filing of the Complaint in this Action through the
13 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
14 timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
15 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
16 Member’s regular rate of compensation on the occasions that Class Members were not authorized
17 or permitted to take compliant rest periods.

18 66. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
19 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s
20 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
21 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

22 67. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
23 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
24 owed for rest periods that they were not authorized or permitted to take.

25 68. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
26 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
27 interest and penalties thereon, attorneys’ fees, and costs, under Labor Code sections 226 and 226.7,
28 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

69. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

70. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

71. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

72. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

73. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation.

74. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to waiting time penalties from the date their earned and unpaid wages were due, upon termination or

1 resignation, until paid, up to a maximum of thirty (30) days.

2 75. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
3 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
4 prior to termination or resignation.

5 76. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
6 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
7 waiting time penalties, interest, and their costs of suit, as well.

8 **SIXTH CAUSE OF ACTION**

9 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

10 77. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs as though fully set forth hereat.

12 78. At all relevant times, Plaintiff and Class Members were employees or former
13 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

14 79. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
15 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
16 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
17 wages earned; and all applicable hourly rates in effect during the pay period and the corresponding
18 number of hours worked at each hourly rate, among other things.

19 80. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
20 before the filing of the Complaint in this Action through the present, Defendants failed to comply
21 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
22 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
23 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
24 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate, among other things.

26 81. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
27 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
28 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully

1 provided wage statements that Defendants knew were not accurate.

2 82. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
3 suffered injury. The absence of accurate information on Class Members' wage statements at times
4 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
5 mathematical computations to determine the amount of wages owed; causes difficulty and expense
6 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
7 about wages and amounts deducted from wages to state and federal governmental agencies, among
8 other things.

9 83. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
10 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
11 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
12 pay period, not to exceed an aggregate \$4,000.00 per employee.

13 84. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
14 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
15 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
16 attorneys' fees, and costs of suit.

17 **SEVENTH CAUSE OF ACTION**

18 **(Violation of Labor Code § 2802 – Against All Defendants)**

19 85. Plaintiff realleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs as though fully set forth hereat.

21 86. At all relevant times, Plaintiff and Class Members were employees or former
22 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

23 87. Labor Code section 2802, subdivision (a) provides that "an employer shall indemnify
24 his or her employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties . . ."

26 88. For three (3) years prior to the filing of the Complaint in this Action through the
27 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
28 necessary expenditures or losses in direct consequence of the discharge of their duties or at the

1 obedience to the directions of Defendants that included, without limitation: laundering mandatory
2 work uniforms and purchasing tools necessary to perform work duties, including, but not limited to,
3 flashlights and cleaning supplies.

4 89. During that time period, Plaintiff is informed and believes, and based thereon alleges
5 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class
6 Members for those losses and/or expenditures.

7 90. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
8 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
9 herein-described losses and/or expenditures.

10 91. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
11 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
12 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
13 costs of suit.

14 **EIGHTH CAUSE OF ACTION**

15 **(Unfair Competition – Against All Defendants)**

16 92. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 93. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
19 of Defendants alleged herein constitutes unfair competition within the meaning of Business and
20 Professions Code section 17200. Due to their unlawful business practices in violation of the Labor
21 Code, Defendants have gained a competitive advantage over other comparable companies doing
22 business in the State of California that comply with their obligations to compensate employees in
23 accordance with the Labor Code.

24 94. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
25 Members have suffered injury in fact and lost money or property.

26 95. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
27 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
28 Code and requiring the establishment of appropriate and effective means to prevent further

1 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
2 including interest thereon, in which they had a property interest and which Defendants nevertheless
3 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
4 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
5 by their failure to comply with the Labor Code.

6 96. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
7 Procedure section 1032 and interest under Civil Code section 3287.

8 **NINTH CAUSE OF ACTION**

9 **(Civil Penalties Under Labor Code § 210 – Against All Defendants and DOES 1-100)**

10 97. Plaintiff realleges and incorporates by reference all the allegations contained in the
11 preceding paragraphs of this Complaint as though fully set forth hereat.

12 98. At all relevant times herein, Labor Code section 204, requires and required that:
13 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
14 between the 16th and 26th day of the month during which the labor was performed, and labor
15 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
16 between the 1st and 10th day of the following month.”

17 99. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
18 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
19 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
20 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
21 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
22 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
23 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

24 100. At all relevant times herein, Defendants have had a consistent policy or practice of,
25 failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per
26 Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved
27 employees or former employees he seeks to represent are entitled to recover civil penalties for
28 Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for

1 each aggrieved employee or former employee for each initial violation per employee, and two
2 hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent
3 violation in connection with each payment that was made in violation of Labor Code section 204.

4 **TENTH CAUSE OF ACTION**

5 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants and DOES 1-100)**

6 101. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
7 the preceding paragraphs of this Complaint as though fully set forth hereat.

8 102. Defendants have had a consistent policy or practice of failing to comply with Labor
9 Code section 226, subdivision (a) by intentionally failing to furnish employees with itemized wage
10 statements that accurately reflect gross wages earned; total hours worked by the employee; all
11 deductions; net wages earned; the inclusive dates of the period for which the employee is paid; all
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate by the employee; and other such information as required by Labor Code
14 section 226, subdivision (a).

15 103. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
16 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
17 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
18 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
19 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

20 104. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
21 this section are in addition to any other penalty provided by law.”

22 105. Plaintiff is informed and believes and based thereon alleges that Defendants failed
23 and continue to fail to furnish non-exempt employees, including, without limitation, Plaintiff, with
24 itemized wage statements that accurately reflect gross wages earned; total hours worked by the
25 employee; all deductions; net wages earned; the inclusive dates of the period for which the employee
26 is paid; all applicable hourly rates in effect during the pay period and the corresponding number of
27 hours worked at each hourly rate by the employee; and other such information, as required by Labor
28 Code section 226, subdivision (a).

106. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees or former employees Plaintiff seeks to represent are entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved employee or former employee per pay period for the initial violation, and one thousand dollars (\$1,000) for each aggrieved employee or former employee per pay period for each subsequent violation.

ELEVENTH CAUSE OF ACTION

(Violation of Labor Code § 558 – Against All Defendants and DOES 1-100)

107. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

108. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any order of the Industrial Welfare Commission” shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages;
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

109. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and each of them, violated, or caused to be violated, the Labor Code sections described herein, including causing Plaintiff and other aggrieved employees not to: be paid overtime wages and minimum wages; receive meal and rest periods or compensation in lieu thereof; and be paid timely wages during their employment and after their employment separation.

110. As a direct and proximate result of Defendants' conduct, Plaintiff and other aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to

1 Labor Code section 558 in amounts to be determined at trial.

2 **TWELFTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 1197.1 – Against ALL DEFENDANTS and DOES 1-100)**

4 111. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth hereat.

6 112. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
7 person acting either individually or as an officer, agent, or employee of another person, who pays
8 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
9 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
10 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
11 Section 203 as follows: For any initial violation that is intentionally committed, one hundred dollars
12 (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This
13 amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages
14 pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

15 i. For any initial violation that is intentionally committed, one hundred dollars
16 (\$100) for each underpaid employee for each pay period for which the employee
17 is underpaid. This amount shall be in addition to an amount sufficient to recover
18 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
19 applicable penalties imposed pursuant to Section 203.

20 ii. For each subsequent violation for the same specific offense, two hundred fifty
21 dollars (\$250) for each underpaid employee for each pay period for which the
22 employee is underpaid regardless of whether the initial violation is intentionally
23 committed. This amount shall be in addition to an amount sufficient to recover
24 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
25 applicable penalties imposed pursuant to Section 203.

26 iii. Wages, liquidated damages, and any applicable penalties imposed pursuant to
27 Section 203, recovered pursuant to this section shall be paid to the affected
28 employee.”

1 113. Plaintiff believes, and thereupon alleges, that Defendants, and each of them, made
2 the decision that Plaintiff would not be paid their due minimum wages as required due to, among
3 other things, Defendants, failing to accurately track and/or pay for all minutes actually worked;
4 engaging, suffering, or permitting employees to work off the clock, including without limitation, for
5 time spent moving vehicles; failing to pay overtime at the proper rate of pay, including but not
6 limited to, by paying straight pay instead of overtime pay; and failing to pay for split shift premiums,
7 to the detriment of Plaintiff and other similarly situated or aggrieved employees.

8 114. As a direct and proximate result of Defendants' conduct, Plaintiff is entitled to
9 recover directly from Defendants, civil penalties, as set forth above, pursuant to Labor Code section
10 1197.1.

11 **FOURTEENTH CAUSE OF ACTION**

12 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants and DOES 1-100)**

13 115. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth hereat.

15 116. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
16 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
17 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
18 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
19 action brought by an aggrieved employee on behalf of herself and other current or former employees
20 pursuant to the procedures specified in Labor Code section 2699.3.

21 117. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
22 Code except those for which a civil penalty is specifically provided, the established civil penalty for
23 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
24 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation.

27 118. Plaintiff is informed and believes and based thereon alleges that Defendants, and
28 each of them, violated the Labor Code sections described herein, including, without limitation, for

1 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
2 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
3 employment and after employment separation; failing to reimburse employment expenses; failing
4 to provide employees the opportunity to inspect employment records; provide and pay for sick leave;
5 and provide notice as required under Labor Code section 2810.5 entitling Plaintiff and other
6 aggrieved employees to civil penalties for each of these Labor Code violations in the amounts set
7 forth in Labor Code section 2699, subdivision (f).

8 119. Accordingly, Plaintiff and other aggrieved current and former employees within the
9 State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees
10 and costs in connection with their herein-described claims for civil penalties.

11 **DEMAND FOR JURY TRIAL**

12 120. Plaintiff demands a trial by jury on all causes of action contained herein.

13 **PRAYER**

14 WHEREFORE, on behalf of Plaintiff and all others similarly situated or aggrieved, Plaintiff
15 prays for judgment against Defendants as follows:

- 16 A. An Order certifying this case as a Class Action;
- 17 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
18 counsel as class counsel;
- 19 C. Damages for all wages earned and owed, including minimum and overtime wages
20 under Labor Code sections 510, 1194, 1197 and 1199;
- 21 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 22 E. Damages for unpaid premium wages from missed meal and rest periods under,
23 among other Labor Code sections, 512 and 226.7;
- 24 F. Penalties for inaccurate wage statements under Labor Code section 226,
25 subdivision (e);
- 26 G. Waiting time penalties under Labor Code section 203;
- 27 H. Damages under Labor Code sections 2802;
- 28 I. Preliminary and permanent injunctions prohibiting Defendants from further

1 violating the California Labor Code and requiring the establishment of appropriate
2 and effective means to prevent future violations;

3 J. Restitution of wages and benefits due which were acquired by means of any unfair
4 business practice, according to proof;

5 K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,
6 1197.1, and 2699;

7 L. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
8 210, 226.3, 558, 1197.1, and 2699;

9 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

10 N. For attorneys' fees in prosecuting this action;

11 O. For costs of suit incurred herein; and

12 P. For such other and further relief as the Court deems just and proper.

13
14 Dated: June 21, 2021

BIBIYAN LAW GROUP, P.C.

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16
17 BY: 

DIEGO AVILES

18 Attorneys for Plaintiff JESUS R. GONZALEZ on
19 behalf of himself and all others similarly situated and
20 aggrieved
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