

SHORTLEGAL, APC  
350 10<sup>TH</sup> AVE., SUITE 1000  
SAN DIEGO, CA 92101

SHORTLEGAL, APC  
Brian R. Short (SBN 236140)  
Email: Brian@ShortLegal.com  
Dorota A. James (SBN 309933)  
Email: Dorota@ShortLegal.com  
350 10<sup>th</sup> Ave., Suite 1000  
San Diego, California 92101  
Telephone: 619.272.0720  
Facsimile: 619.839.3129

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**12/21/2020** at 02:48:00 PM  
Clerk of the Superior Court  
By Taylor Crandall, Deputy Clerk

Attorneys for Plaintiff SETH NORTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

SETH NORTON, Individually and on behalf  
of all similarly-situated employees of  
Defendants in the State of California,

Plaintiffs,

v.

CARE MEDICAL TRANSPORTATION,  
INC., a California corporation, and DOES 1  
through 50, inclusive,

Defendants.

Case No.: 37-2020-00036520-CU-OE-CTL

Unlimited Civil - Amount Demanded  
Exceeds \$25,000.00

IMAGED FILE

**FIRST AMENDED COMPLAINT**

**CLASS ACTION [CCP § 382]**

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Provide and Maintain Accurate Itemized Wage Statements
4. Failure to Timely Pay Wages Due Upon Separation of Employment
5. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
6. PAGA Claim for Civil Penalties

Date Complaint Filed: October 13, 2020

///

///

///

Plaintiff SETH NORTON on behalf of himself and all other similarly-situated employees alleges as follows:

I.

**NATURE OF ACTION AND INTRODUCTORY STATEMENT**

1. Plaintiff SETH NORTON (hereinafter “NORTON”), brings this individual, class, and representative action suit against Defendant CARE MEDICAL TRANSPORTATION, INC. (“CARE” or “Defendant”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of himself and all other current and former similarly-situated and current and former aggrieved employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. CARE MEDICAL TRANSPORTATION, INC. is a company that provides emergency medical transportation services in San Diego County, California.

3. SETH NORTON, at times relevant, was employed by Defendants as non-exempt emergency medical technician (“EMT”) in San Diego, California.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and the applicable IWC Wage Order, including, but not limited to:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- b. Failing to provide and maintain accurate records and itemized wage statements;
- and
- c. Failing to timely pay wages due during and upon termination of employment.

5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all similarly-situated employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney’s fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 510, 558, 558.1, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., California

1 Code of Civil Procedure 1021.5, and provisions of IWC Wage Order 9-2001. Plaintiff reserves the right  
2 to name additional representatives throughout the State of California.

3 **II.**

4 **PARTIES, JURISDICTION AND VENUE**

5 6. Plaintiff SETH NORTON is and at all relevant times was a resident of the State of  
6 California, and at all relevant times was employed by Defendants in San Diego, California.

7 7. Defendant CARE MEDICAL TRANSPORTATION, INC. ("CARE"), is a California  
8 company doing business in California, including San Diego County, California.

9 8. Plaintiff is informed and believes, and thereon alleges, that at times relevant CARE, and  
10 Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents or other  
11 persons, employed Plaintiff and other similarly-situated and current and former aggrieved employees, and  
12 exercised control over their wages, hours, and/or working conditions. Plaintiff is informed and believes,  
13 and thereon alleges, that each Defendant directly or indirectly, or through agents or other persons, acted  
14 and/or ratified in all respects pertinent to this action as the agent of the other Defendants, carried out a  
15 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is  
16 legally attributable to the other Defendants.

17 9. Plaintiff was, at times relevant, employed by Defendants in San Diego, California as an  
18 emergency medical technician and was subject to the employment policies, procedures and practices  
19 implemented by Defendants which applied to all of their employees throughout the State of California,  
20 including in San Diego.

21 10. Defendants, at all relevant times, conducted business in the State of California and were  
22 employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor  
23 Code or any provision regulating hours and days of work in any order of the Industrial Welfare  
24 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code  
25 § 558 and or 558.1.

26 11. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive,  
27 are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and  
28

1 capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and  
2 on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this  
3 Complaint.

4 12. Jurisdiction and venue are proper for the San Diego Superior Court because Defendants  
5 maintain offices, transact business, and/or have an agent in San Diego Superior County and some of the  
6 acts and events complained of herein occurred in the judicial district of San Diego County Superior Court  
7 and the State of California.

8 **III.**

9 **GENERAL ALLEGATIONS**

10 13. Plaintiff SETH NORTON was employed with Defendants from January 6, 2020 until July  
11 27, 2020 when he resigned.

12 14. Defendant CARE is a San Diego company that provides emergency medical transportation  
13 services in San Diego County, California.

14 15. Plaintiff and other similarly-situated and current and former aggrieved employees worked  
15 under numerous Defendants' policies, practices, and procedures relating to the hours worked, wage  
16 statements, recordkeeping, and payment of wages applicable to Plaintiff and other similarly-situated and  
17 current and former aggrieved employees of Defendants in the State of California. Defendants failed to pay  
18 all wages to Plaintiff and as a result of Defendants' unlawful policies and practices.

19 16. During their tenure with Defendants, Plaintiff and other similarly-situated and current and  
20 former aggrieved employees were non-exempt hourly employees eligible for overtime wages for work in  
21 excess of eight (8) hours a day and 40 hours within a workweek but they were not paid at least minimum  
22 wage for each hour worked, nor were they provided overtime wages for all overtime hours worked.

23 17. At all times relevant, Defendants required Plaintiff and other class members to remain on  
24 call during the entirety of their shifts and carry radios, pagers, and other electronics, and keep those devices  
25 on, to remain vigilant and responsive to calls when the need arose. Plaintiff and other similarly-situated  
26 and current and former aggrieved employees were required to remain on-call and carry the portable  
27 communication devices during their lunch breaks as well to ensure any CARE dispatcher would be able  
28

1 to reach them in case they needed to get immediately to an emergency scene. In addition, at all relevant  
2 times, Plaintiff and other similarly-situated and current and former aggrieved employees were required to  
3 remain in close proximity to their ambulances during their lunch breaks in order to reach them as quickly  
4 as possible, if needed.

5 18. While Plaintiff and other similarly-situated and current and former aggrieved employees  
6 were required by Defendants to be on call during the entirety of their shifts, Defendants had a practice of  
7 automatically clocking out and in Plaintiff and other similarly-situated and current and former aggrieved  
8 employees for their lunches and deducting 30-minutes from their daily total hours worked during a single  
9 shift despite the fact that they were working. As result of the illegal practice, Plaintiff and other similarly-  
10 situated and current and former aggrieved employees were not compensated for all minimum, regular and  
11 overtime wages as required under the relevant Labor Code provisions.

12 19. In addition, because Plaintiff was paid an hourly rate of \$13.00, a California statewide  
13 minimum wage, the automatic deduction of 30 minute per every shift Plaintiff worked effectively  
14 decreased his hourly rate below the required minimum wage required by the California Labor Code. On  
15 information and belief, other putative Class Members were subject to this unlawful practice and policy.

16 20. At all relevant times, Defendants failed to provide Plaintiff with wage statements  
17 accurately itemizing information required by Labor Code § 226(a) and Section 7 of the applicable Wage  
18 Order including. The wages statements that were provided did not include all the items required by law  
19 and some of information they did contain was inaccurate. For example, the wage statements did not  
20 include all regular and overtime hours worked and all wages earned. On information and belief, other  
21 similarly-situated and current and former aggrieved employees were subject to the same policy and  
22 practice concerning wage statements and receive similarly deficient wage statements.

23 21. As a result of these deficiencies and inaccuracies, Plaintiff and other similarly-situated and  
24 current and former aggrieved employees were not able to promptly and easily determine from the wage  
25 statements alone their total overtime and/or all wages earned.

26 22. Defendants failed to maintain accurate records reflecting all wages earned as required by  
27 law.

23. Defendants failed to pay Plaintiff and other similarly-situated and current and former aggrieved employees for all wages due and owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all hours worked.

24. Defendants failed to pay Plaintiff SETH NORTON and other similarly-situated and current and former aggrieved employees all wages due and owing at the time of termination of employment as required by Labor Code §§ 201(a) and 202(a), as applicable, because Plaintiff SETH NORTON and other similarly-situated and current and former aggrieved employees were not properly compensated for all hours worked. On information and belief, Defendants willingly withheld wages including, but not limited to overtime wages.

25. Defendants have engaged in unfair business practices in California and willingly and knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this complaint in violation of Business & Professions Code §§ 17200, *et seq.*

#### IV.

#### **CLASS ACTION DESIGNATION**

26. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf of all current and former similarly-situated employees. The Class that Plaintiff seeks to represent is defined as follows:

All current and former non-exempt employees who were employed as ambulance crew members with jobs titles including, but not limited to Emergency Medical Technicians, Paramedics, and Drivers by Defendants in the State of California at any time commencing four (4) years prior to the filing of this Action.

27. Plaintiff reserves the right under the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

28. As to Causes of Action One through Five, Plaintiff seeks to recover on behalf of the Class all remedies available to the extent permitted by law including, but not limited to, wages, damages, penalties, interest, attorney's fees, costs, other monies due and owing and injunctive relief.

29. Plaintiff reserves the right under the California Rules of Court, to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

30. Causes of Action One through Five are appropriately suited for a class action under Code of Civil Procedure § 382 because:

a. Numerosity: While the precise number of Class Members has not been determined at the time, Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants employed over 100 similarly-situated current and former employees who were affected by the unlawful employment practices and policies alleged herein. Based on the potential class size, joinder of all employees individually would be impractical.

b. Commonality: This action involves common questions of law and fact particular to the putative Class because the action focuses on Defendants' systematic course of illegal conduct with respect to violating the Labor Codes and IWC Wage Orders and implementing company-wide policies uniformly applied to all members of the putative Class.

i. Common questions of law and fact include, without limitation and subject to possible further amendment, the following:

1. Whether Defendants violated the Labor Code by not fully compensating Plaintiff and the Class by failing to pay them minimum, regular, and overtime wages as required by law;

2. Whether Defendants' policy or practice of not paying hourly employees all of their wages due in their final paychecks immediately upon termination or when 72-hour-notice was provided before voluntary resignation, is unlawful under Labor Code §§ 201, 202 and/or 203;

3. Whether Defendants violated Labor Code §§ 226 by not providing accurate paystubs;

4. Whether Defendants violated Labor Code §§ 1174 by not maintaining required personnel records; and

5. Whether Plaintiff and the members of the Class are entitled to remedies pursuant to Business & Professions Code §§ 17200, et seq.

c. Typicality: Plaintiff's claims as alleged herein are typical of the claims of each of the putative Class because Plaintiff was subjected to the same violations of his rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class he seeks to represent.

d. Adequacy of Representation: Plaintiff is able to fairly and adequately protect the interests of all members of the putative Class because it is in his best interest to prosecute the claims alleged herein to obtain full compensation due to his for all pay, benefits and other relief afforded under the Labor Code and IWC Wage Orders. Plaintiff's interest is not in conflict with those of the putative class members. Plaintiff's counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

## V.

### PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

31. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

32. This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any departments, divisions, commissions, boards, agencies or employees;

33. Plaintiff NORTON is an "aggrieved employee" because he was employed by the alleged violators and had one or more of the alleged violations committed against her and, therefore, is properly suited to represent the interests of all other current and former employees of Defendants;

34. Plaintiff NORTON seeks to recover all applicable penalties under PAGA on behalf of himself and all other aggrieved employees including, but not limited to, an amount sufficient to recover underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.

35. Pursuant to Labor Code § 2698, et seq., Plaintiff NORTON has complied with his notice requirements by serving via certified mail, return receipt requested, the LWDA and CARE MEDICAL TRANSPORTATION, INC., a notice with his claims for wage and hour violations and penalties. The PAGA claims have been tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the LWDA did not serve Plaintiff NORTON with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff NORTON satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code § 2698, et seq.

## **VI.** **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION** **FAILURE TO PAY MINIMUM AND REGULAR WAGES** (Violation of Labor Code §§ 1194, 1197, 1198 and the Applicable Wage Order) (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

36. Plaintiff NORTON realleges and incorporates by reference the foregoing allegations, as though set forth herein.

37. Plaintiff and members of the Class are/were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

38. Labor Code § 1197 states "The minimum wage for employees fixed by the commission or by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful."

39. Labor Code § 1198 states "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor

1 for employees. The employment of any employee for longer hours than those fixed by the order or under  
2 conditions of labor prohibited by the order is unlawful.”

3 40. IWC Wage Order 9-2001 § 4 provides that an employer may not pay employees less than  
4 the applicable minimum wage for all hours worked.

5 41. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any  
6 employee receiving less than the legal minimum wage or the legal overtime compensation applicable to  
7 the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum  
8 wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

9 42. At all times relevant, Defendants agreed to pay Plaintiff his respective hourly rate for all  
10 hours worked. Pursuant to Wage Order No. 9-2001, “hours worked” include the time during which an  
11 employee is “suffered or permitted to work, whether or not required to do so. As set forth above, members  
12 of the class were not paid all minimum and regular wages for all hours worked as required by the California  
13 Labor Code. For example, Defendants did not compensate Plaintiff and other similarly-situated and  
14 current and former employees for all the time they were required to remain on call, including their on-  
15 duty lunch breaks.

16 43. At all material times, Defendants were and/or are Plaintiff’s and/or other similarly-situated  
17 and current and former employees’ employers and/or persons acting on behalf of Defendants within the  
18 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter  
19 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the  
20 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set  
21 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

22 44. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
23 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who  
24 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work  
25 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code  
26 Sections 203, 226, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such  
27 violations pursuant to California Labor Code § 558.1.

1           45.     As a direct result of Defendants’ violations alleged herein, Plaintiff and the putative Class  
2 Members have suffered and continue to suffer, substantial losses related to the use and enjoyment of such  
3 wages, including lost interest on such monies and expenses and attorney’s fees in seeking to compel  
4 Defendants to fully perform their obligation under state law, all to their respective damage in amounts  
5 according to proof at trial and within the jurisdictional limitations of this Court.

6           46.     Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the  
7 unpaid wages resulting from Defendants’ minimum wage violations including interest thereon, reasonable  
8 attorney’s fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible  
9 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure  
10 § 1021.5.

11           WHEREFORE, Plaintiff NORTON prays for relief as hereinafter requested.

12                               **SECOND CAUSE OF ACTION**

13                               **FAILURE TO PAY OVERTIME WAGES**

14                               (Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)  
15                               (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

16           47.     Plaintiff SETH NORTON realleges and incorporates by reference the foregoing  
17 allegations, as though set forth herein.

18           48.     Plaintiff and members of the Class are/were “non-exempt” employees of Defendants in the  
19 State of California within the meaning of the Labor Code and the applicable Wage Order.

20           49.     Labor Code § 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work.  
21 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek  
22 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated  
23 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in  
24 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay  
25 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall  
26 be compensated at the rate of no less than twice the regular rate of pay of an employee.”

27           50.     Labor Code § 1198 states “The maximum hours of work and the standard conditions of  
28 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor

1 for employees. The employment of any employee for longer hours than those fixed by the order or under  
2 conditions of labor prohibited by the order is unlawful.”

3 51. IWC Wage Order 9-2001 § 3(A) provides that an employer may not pay non-exempt  
4 employees less than the applicable overtime rate for all overtime hours worked.

5 52. At all material times, Plaintiff and other similarly-situated and current and former  
6 employees were non-exempt hourly employees eligible for overtime wages for work in excess of eight (8)  
7 hours a day and 40 hours within a workweek but they were not paid overtime wages for all overtime hours  
8 worked.

9 53. At all material times, Defendants were and/or are Plaintiff’s and/or other similarly-situated  
10 and current and former employees’ employers and/or persons acting on behalf of Defendants within the  
11 meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter  
12 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the  
13 Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set  
14 forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

15 54. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and  
16 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who  
17 violated, or caused to be violated, any provision regulating hours and days of work in the applicable order  
18 of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 1193.6,  
19 and 1194, and as such, are liable as an employer of Plaintiff for such violations pursuant to California  
20 Labor Code § 558.1.

21 55. As a direct result of Defendants’ violations alleged herein, Plaintiff and the putative Class  
22 Members have suffered and continue to suffer substantial losses related to the use and enjoyment of such  
23 wages, including lost interest on such monies and expenses and attorney’s fees in seeking to compel  
24 Defendants to fully perform their obligation under state law, all to their respective damage in amounts  
25 according to proof at trial and within the jurisdictional limitations of this Court.

26 56. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the  
27 unpaid wages resulting from Defendants’ overtime wage violations including interest thereon, reasonable  
28

1 attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted  
2 pursuant to Labor Code §§ 510, 558, 1194, and Code of Civil Procedure §1021.5.

3 WHEREFORE, Plaintiff SETH NORTON prays for relief as hereinafter requested.

4  
5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**  
7 **ITEMIZED WAGE STATEMENTS**

8 (Violation of Labor Code §§ 226(a), 1174 and the Applicable Wage Order)  
9 (Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

10 57. Plaintiff SETH NORTON realleges and incorporates by reference the foregoing  
11 allegations, as though set forth herein.

12 58. At all times relevant, Plaintiff was an employee of Defendants within the meaning of the  
13 Labor Code and the applicable Wage Order.

14 59. Labor Code §1174(c)-(d) requires employers to keep records showing the names and  
15 addresses of all employees employed, and to keep, at a central location in the State of California or at the  
16 establishments at which employees are employed, payroll records showing the hours worked daily by and  
17 the wages paid to all employees employed at the establishment.

18 60. Labor Code § 226(a) states in pertinent part "Every employer shall, semimonthly or at the  
19 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the  
20 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal  
21 check or cash, an accurate itemized statement in writing showing:

22 (1) Gross wages earned;

23 (2) Total hours worked by the employee, except for any employee whose compensation is  
24 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section  
25 515 or any applicable order of the Industrial Welfare Commission;

26 (3) The number of piece-rate units earned and any applicable piece rate if the employee is  
27 paid on a piece rate basis;

28 (4) All deductions, provided that all deductions made on written orders of the employee  
may be aggregated and shown as one item;

(5) Net wages earned;

(6) The inclusive dates of the period for which the employee is paid;

(7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number;

(8) The name and address of the legal entity that is the employer...;

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

61. IWC Wage Order 9-2001 § 7(A) states in relevant part that the employer shall keep accurate information regarding “(3) Time Records showing when the employee begins and ends each work period... (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay.”

62. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed to provide accurate wage statements. For example, in addition to the derivative violations suffered as a result of the other violations detailed above, Defendants also failed to provide a wage statement that properly identified the number of the total hours worked and wages earned as required under the Labor Code.

63. Plaintiff suffered injuries as a result of Defendants’ intentional and knowing failure to provide to Plaintiff and maintain the writings required by Labor Code § 226(a) and the IWC Wage Orders. Defendants’ failure to provide and maintain accurate statements left Plaintiff without the ability to know, understand and question the hours worked and wage earned and due. As a direct result, Plaintiff has suffered and continues to suffer substantial injuries, losses and actual damages related to Defendants’ violations, including lost wages, lost interest on such wages, and expense and attorney’s fees in seeking

1 to compel Defendants to fully perform their obligations.

2         64. Labor Code § 226(e)(1) states “An employee suffering injury as a result of a knowing and  
3 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all  
4 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred  
5 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate  
6 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's  
7 fees.” Labor Code § 226(e)(2)(B) states “An employee is deemed to suffer injury for purposes of this  
8 subdivision if the employer fails to provide accurate and complete information as required by any one or  
9 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily  
10 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or  
11 net wages paid to the employee during the pay period or any other information required to be provided on  
12 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)...”  
13 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,  
14 among other things, an accurate accounting of gross wages earned or total and overtime hours worked, he  
15 is deemed to have suffered injury.

16         65. Labor Code § 226(h) states “An employee may also bring an action for injunctive relief to  
17 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

18         66. At all material times, Defendants were and/or are Plaintiff's and/or other similarly-situated  
19 employees' employers and/or persons acting on behalf of Defendants within the meaning of Labor Code  
20 § 558, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code  
21 or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission  
22 and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558  
23 including the payment of the underpaid wages to affected employees.

24         67. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and  
25 continues to suffer injury including substantial losses related to the use and enjoyment of such wages, lost  
26 interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform  
27 their obligation under state law, all to the respective damage in amounts according to proof at trial and  
28

1 within the jurisdictional limitations of this Court.

2 68. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages,  
3 penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those  
4 permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

5 WHEREFORE, Plaintiff SETH NORTON prays for relief as hereinafter requested.

6 **FOURTH CAUSE OF ACTION**  
7 **FAILURE TO TIMELY PAY WAGES DUE**  
8 **UPON SEPARATION OF EMPLOYMENT**  
(Violation of Labor Code §§ 201(a), 202(a), 203(a))  
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

9 69. Plaintiff SETH NORTON realleges and incorporates by reference the foregoing  
10 allegations, as though set forth herein.

11 70. Plaintiff and members of the putative Class are/were "non-exempt" employees of  
12 Defendants within the meaning of the Labor Code and the applicable Wage Order.

13 71. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and  
14 unpaid at the time of discharge are due and payable immediately."

15 72. Labor Code § 202(a) states "If an employee not having a written contract for a definite  
16 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours  
17 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which  
18 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other  
19 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive  
20 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall  
21 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the  
22 notice of quitting."

23 73. Through Defendants' conduct during the applicable statutory period including, but not  
24 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants  
25 willfully failed to provide Plaintiff and the putative Class Members with all wages due and owing,  
26 including minimum wages, overtime wages, regular wages, meal premiums, and vested vacation wages  
27 by the time specified by Labor Code §§ 201(a) and 202(a), as applicable.  
28

74. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

75. At all material times, Defendants were and/or are Plaintiff’s and/or other similarly-situated and current and former employees’ employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

76. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 233, 234, 226, 1193.6, and 1194, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

77. As a direct result of Defendants’ violations alleged herein, Plaintiff and members of the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney’s fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

78. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code § 203.

WHEREFORE, SETH NORTON Plaintiff prays for relief as hereinafter requested.

///

///

**FIFTH CAUSE OF ACTION**

**VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, *ET SEQ.***

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

79. Plaintiff SETH NORTON realleges and incorporates by reference the foregoing allegations, as though set forth herein.

80. CARE is a “person” as that term is defined under the Cal. Bus. Prof. Code § 17201.

81. Business & Professions Code § 17200 states “As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

82. Through Defendants’ conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the Industrial Welfare Commission Wage Orders. Defendants’ use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants’ competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and pay employees for all earned wages and compensation as required by law.

83. Defendants’ violations of the Labor Code and the Industrial Welfare Commission Wage Orders and their scheme to lower payroll costs as alleged herein constitute unlawful business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) pay minimum and regular wages; (ii) to pay overtime wages; (iii) pay timely wages during and upon separation of employment; and (iv) maintain accurate records and provide and maintain accurate itemized wage statements.

84. Plaintiff is informed and believes and on that basis alleges that, at all times herein mentioned, CARE have engaged in the above-mentioned acts of unlawful, deceptive, and unfair business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including those set

1 forth in the preceding paragraph, thereby depriving Plaintiff and the putative Class the minimum working  
2 condition standards and conditions due, including those under California Labor Code and Wage Order of  
3 the Industrial Welfare Commission.

4 85. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury  
5 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as  
6 alleged herein.

7 86. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek  
8 restitution of all wages and other monies owed on behalf of himself and the represented employees  
9 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and  
10 retained for themselves by means of its unlawful and unfair business practices.

11 87. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such  
12 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity  
13 of lawsuits.

14 88. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged  
15 herein is continuing and there is no indication that Defendants will not continue such activity into the  
16 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,  
17 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply  
18 with other requirements of the California Labor Code and Wage Order of the Industrial Welfare  
19 Commission.

20 89. As a direct and proximate result of Defendants' conduct, Defendants have received and  
21 will continue to receive monies that rightfully belong to members of the general public who have been  
22 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other  
23 monies.

24 90. Plaintiff is entitled and seeks any and all available remedies including restitution and  
25 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business  
26 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

27 WHEREFORE, Plaintiff prays for relief as hereinafter requested.  
28

**SIXTH CAUSE OF ACTION**  
**PRIVATE ATTORNEY GENERAL ACT (PAGA)**

(Violation of Labor Code § 2699, *et seq.*)

(Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees  
Against All Defendants)

91. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

92. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

93. Plaintiff NORTON is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former aggrieved employees of Defendants.

94. On or about September 27, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff NORTON served via certified mail, return receipt requested, the LWDA, and DEFENDANT with his claims for wage and hour violations and penalties. The statutory period expired, and the LWDA did not serve Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code §2698, *et seq.*

95. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

96. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiff and current and former aggrieved employees at least minimum and regular wages for the time permitted to work, engaged in work, and/or under Defendants’ control as alleged herein. Under Labor Code § 2699

(f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

97. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current and former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or under Defendants' control as alleged herein. On information and belief, at all relevant times, Plaintiff and other current and former aggrieved employees were not paid overtime wages when they worked in excess of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

98. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the applicable IWC Wage Order by knowingly and intentionally failing to maintain and provide Plaintiff and other current and former aggrieved employees of Defendants with accurate wage statements itemizing all information required by Labor Code § 226(a), as alleged herein, including the correct number of hours worked and the correct total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

99. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide accurate itemized wage statements.

100. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by Labor Code § 1174 is a subject to a civil penalty of \$500.

101. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and other current and former aggrieved employees all overtime wages owed and all meal premiums wages owed by the time set forth by law upon their separation of employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee

1 per pay period for the initial violation of Labor Code §§ 201, 202, 203, and 1198, and \$200 for each  
2 aggrieved employee per pay period for each subsequent violation.

3 102. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other  
4 current and former aggrieved employees all overtime wages owed by the time set forth by law upon during  
5 their employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a  
6 civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code  
7 §§ 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

8 103. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226,  
9 510, 1174, 1198 and Labor Code § 2699, *et seq.*, imposes upon Defendants, and each of them, penalties  
10 for violating the Labor Code, including those penalties set forth in 210, 226.3, 558, 1174.5 and 2698, *et*  
11 *seq.*

12 104. Pursuant to Labor Code § 2699, Plaintiff NORTON seeks to recover civil penalties on  
13 behalf of himself and other current and former aggrieved employees of Defendants who suffered one or  
14 more the labor code violations described herein. The exact amount of the applicable penalty is all in an  
15 amount to be shown according to proof at trial.

16 105. For bringing this action, Plaintiff NORTON is entitled to attorney's fees and costs incurred  
17 herein.

18 WHEREFORE, Plaintiff NORTON prays for relief as hereinafter requested.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for damages for judgment against Defendants, jointly and  
21 severally, as applicable, as follows:

- 22 a. For injunctive relief as provided by the Labor Code and to the extent permitted by law  
23 including, but not limited to, pursuant to § 226(h) and Business and Professions Code  
24 §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records  
25 as required by § 226(h) and the "Records" section of the applicable IWC wage order;  
26 b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 27  
28

- 1 c. For an order requiring Defendants to restore and disgorge all funds to each affected  
2 person acquired by means of any act or practice declare by this Court to be unlawful,  
3 unfair or fraudulent and, therefore, constituting unfair competition under Business and  
4 Professions Code §§ 17200, *et seq.*;
- 5 d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial  
6 Welfare Commission including, but not limited to, waiting time penalties under Labor  
7 Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.8, 558, 1174.5, and  
8 PAGA penalties pursuant to Labor Code §2698 *et seq.*;
- 9 e. For an award of unpaid wages, including regular wages, minimum and overtime wages,  
10 to the extent permissible by law to each affected person;
- 11 f. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial  
12 Welfare Commission including, but not limited to, waiting time penalties under Labor  
13 Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
- 14 g. For an award of actual damages to the extent permissible by the Labor Code including  
15 Labor Code § 226(e);
- 16 h. For an award of liquidated damages to the extent permissible by Labor Code §1194.2;
- 17 i. For pre- and post-judgment interest to the extent permitted by law including, but not  
18 limited to, Labor Code §§ 218.6 and 1194.
- 19 j. For reasonable attorney's fees and cost of suit and, to the extent permitted by law,  
20 including pursuant to Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure §  
21 1021.5; and
- 22 k. An award of such other and further relief as this Court deems proper and just.

23  
24 Dated: December 21, 2020

ShortLegal, APC

25  
26 

By:

27 BRIAN R. SHORT  
28 DOROTA A. JAMES  
Attorneys for Plaintiff SETH NORTON

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury to the extent authorized by law.

Dated: December 21, 2020

ShortLegal, APC



By: \_\_\_\_\_

BRIAN R. SHORT  
DOROTA A. JAMES  
Attorneys for Plaintiff SETH NORTON