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 RODRIGO PORTILLO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

RODRIGO PORTILLO, an individual,
 Plaintiff,

v.

CORNER KEYSTONE CONSTRUCTION
 CORP., a California corporation; ALVARO
 RODRIGUEZ, an individual; and DOES 1
 through 20, inclusive,

Defendants.

Case No. **21STCV08333**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (LAB. CODE §98.6);**
- 2. RETALIATION (LAB. CODE §§1102.5, 1102.6);**
- 3. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 4. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 5. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 6. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 7. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.);**
- 8. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

1 **COMES NOW PLAINTIFF, RODRIGO PORTILLO**, and for causes of action against the
2 Defendants and each of them, alleges as follows:

3
4 **JURISDICTION**

5 1. This Court is the proper court, and this action is properly filed in Los Angeles County,
6 because Defendants' obligations and liability arise therein, because Defendants maintain offices and
7 transact business within Los Angeles County, and because the work that is the subject of this action was
8 performed by Plaintiff in Los Angeles County.

9
10 **THE PARTIES**

11 2. Plaintiff, RODRIGO PORTILLO, is and at all times relevant hereto was a resident of the
12 County of Los Angeles, State of California.

13 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
14 hereto, Defendant CORNER KEYSTONE CONSTRUCTION CORP. (hereinafter referred to as
15 "CKCC") was and is a California corporation doing business in the County of Los Angeles, State of
16 California.

17 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
18 hereto, Defendant ALVARO RODRIGUEZ (hereinafter referred to as "Mr. Rodriguez") is and at all
19 times relevant hereto was a resident of the County of Los Angeles, State of California.

20 5. CKCC and Mr. Rodriguez are hereinafter referred to as "Employers" or "Defendants."

21 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
22 hereto, Employers owned and operated a construction company.

23 7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
24 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
25 Commission Order No. 1-2001, and are each an "employer or other person acting on behalf of an
26 employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that
27 basis.

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1 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
3 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
4 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
5 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
6 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
7 alleged hereinafter.

8 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
9 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
10 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
11 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
12 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
13 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

14 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
15 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
16 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
17 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
18 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
19 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
20 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
21 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
22 actually causing Plaintiff harm.

23 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
24 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
25 and/or failures to act by each Defendant acting individually, jointly and severally.

26 12. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
27 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
28 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and

1 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
2 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.
3

4 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

5 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
6 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
7 defendants have ceased to exist.

8 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
9 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
10 but not limited to because:

11 a. Employers are completely dominated and controlled by one another and DOES 1-
12 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
13 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
14 accomplish some other wrongful or inequitable purpose.

15 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
16 through one another’s unlawful conduct, and by using one another as the funding source for their own
17 personal expenditures.

18 c. Employers and DOES 1-20, while really one and the same, were segregated to
19 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
20 accomplishing some other wrongful or inequitable purpose.

21 d. Employers do not comply with all requisite corporate formalities to maintain a
22 legal and separate corporate existence.

23 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
24 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
25 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
26 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants’ affairs, and are, and
27 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
28 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from

1 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
2 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
3 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

4 15. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
5 fiction of their separate corporate existence must be disregarded.

6 16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
7 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
8 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
9 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
10 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
11 Defendants' business was and is conducted.

12 17. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
13 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
14 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
15 Defendants, (2) the transaction between Employer sand/or DOES 1-20 and the other Defendants amounts
16 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
17 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
18 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
19 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

20
21 **FACTUAL ALLEGATIONS**

22 18. In or around April 2019, Plaintiff began working for CORNER KEYSTONE
23 CONSTRUCTION CORP. (hereinafter referred to as "CKCC" or "Employer Defendant"), as a Painter.
24 Plaintiff performed all of his duties competently and satisfactorily, until he was wrongfully terminated
25 on or about April 11, 2020.

26 19. Plaintiff worked approximately 20 overtime hours each week, but received only Plaintiff's
27 regular hourly wage rate for these hours, with no overtime premium.

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1 20. Plaintiff's schedule was approximately five days per week, which the days varied from
2 Monday through Sunday, for approximately 10-12 hours per day.

3 21. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
4 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
5 thereof.

6 22. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
7 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
8 worked. Throughout Plaintiff's employment, Plaintiff did not receive a second uninterrupted statutory
9 30-minute meal periods for days on which Plaintiff worked at least 10 hours, which was 5 days each
10 week. One or more of Plaintiff's 30-minute meal periods were interrupted and often not provided
11 approximately 5-10 times per week.

12
13 **FIRST CAUSE OF ACTION**
14 **FOR RETALIATION IN VIOLATION OF LABOR CODE §98.6**
15 **AGAINST ALL DEFENDANTS**

16 23. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
17 set forth in full herein.

18 24. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
19 employee for political activities; for complaining that he or she is owed unpaid wages, for
20 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
21 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
22 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
23 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
24 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
25 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
26 against an employee who, among other things, has exercised her or her rights under that Chapter,
27 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
28 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code

1 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
2 thousand dollars (\$10,000.00) for each violation of that section.

3 25. Plaintiff is informed and believe, and based thereupon allege, that Plaintiff was terminated
4 from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not being paid
5 all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal and/or rest
6 breaks. Defendants' retaliatory animus is evidenced by, among other things, the following facts:
7 Defendants terminating Plaintiff's employment after Plaintiff complained about the various wage and
8 hour violations committed by Defendants.

9 26. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
10 Defendants, and Defendants' officers and/or managing agents, including ALVARO RODRIGUEZ and
11 those identified herein as DOES 1-20, who were authorized and empowered to make decisions that reflect
12 and/or create policy for Defendants. The aforementioned conduct of said managing agents and
13 individuals was therefore undertaken on behalf of Defendants. Defendants further had advanced
14 knowledge of the actions and conduct of said individuals whose actions and conduct were ratified,
15 authorized, and approved by managing agents whose precise identities are unknown to Plaintiff at this
16 time and are therefore identified and designated herein as DOES 1-20, inclusive.

17 27. The damage allegations of above-stated Paragraphs, inclusive, are herein incorporated by
18 reference.

19 28. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
20 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

21 29. Because the acts taken toward Plaintiff were carried out by managerial employees acting
22 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
23 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
24 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

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1 **SECOND CAUSE OF ACTION**

2 **FOR RETALIATION IN VIOLATION OF LABOR CODE §§1102.5 and 1102.6**

3 **AGAINST ALL DEFENDANTS**

4 30. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
5 set forth in full herein.

6 31. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was binding
7 on Defendants. This law prohibits an employer, or any person acting on behalf of the employer, from
8 discharging an employee or in any manner discriminating or retaliating against, or taking any adverse
9 action against, an employee because, among other things, the employee disclosed information to a
10 government or law enforcement agency, or to a person with authority over the employee or another
11 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the
12 employee has reasonable cause to believe that the information discloses a violation of state or federal
13 statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
14 whether disclosing the information is part of the employee's job duties. Pursuant to Labor Code
15 §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability company
16 is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

17 32. Plaintiff reported suspected violations of the Labor Code to Plaintiff's supervisors at
18 ALVARO RODRIGUEZ.

19 33. Defendants subjected Plaintiff to the adverse employment action, including without
20 limitation, termination because Plaintiff reported the suspected violations of the Labor Code to Plaintiff's
21 supervisors.

22 34. Plaintiff's reports of these violations were a motivating and contributing factor for the
23 adverse employment actions by Defendants against Plaintiff.

24 35. Said conduct violates Labor Code Labor Code §1102.5 and Labor Code §1102.6, and such
25 violations were a proximate cause in Plaintiff's damages as hereinabove stated.

26 36. The damage allegations of above-stated Paragraphs, inclusive, are herein incorporated by
27 reference.

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1 37. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
2 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

3 38. The foregoing conduct of Defendants individually, or by and through their managing
4 agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on by
5 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
6 and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression,
7 or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate
8 to punish or make an example of Defendants.

9
10 **THIRD CAUSE OF ACTION**
11 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
12 **LABOR CODE §§510, 1194**
13 **AGAINST ALL DEFENDANTS**

14 39. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
15 set forth in full herein.

16 40. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
17 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
18 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
19 hours in a single day. It also requires employers to pay their non-exempt employees overtime
20 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
21 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
22 consecutive day of work.

23 41. At all relevant times, Defendants required Plaintiff to work more than eight hours per
24 day and/or more than 40 hours per workweek.

25 42. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
26 compensation required by Labor Code §510, the applicable 8 Code of Regulations section, and applicable
27 Industrial Welfare Commission Order.

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1 43. In the four years last past, Plaintiff worked 20 hours of overtime each week, all of which
2 should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants failed
3 to pay Plaintiff the requisite overtime wages in each of the following ways in the years immediately
4 preceding the filing of this complaint:

5 a. From approximately April 1, 2019 to December 31, 2019, Plaintiff worked an
6 approximately 372 overtime hours. Plaintiff's overtime rate for this period was \$34.50 per hour. During
7 this time period, Plaintiff worked an average of 20 overtime hour per week for 39 weeks. Therefore,
8 Plaintiff is owed \$11.50 for each of those 372 hours, totaling **\$4,278.00**.

9 b. From approximately January 1, 2020 to April 11, 2020, Plaintiff worked an
10 approximately 138 overtime hours. Plaintiff's overtime rate for this period was \$34.50 per hour. During
11 this time period, Plaintiff worked an average of 20 overtime hours per week for 14 weeks. Therefore,
12 Plaintiff is owed \$11.50 for each of those 138 hours, totaling **\$1,587.00**.

13 44. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
14 Code §510, the applicable 8 Code Regulations section, and the applicable Industrial Welfare Commission
15 Order.

16 45. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
17 of **\$5,865.00**, above and beyond the minimum wages sought in the preceding cause of action for these
18 same hours.

19 46. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
20 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
21 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

22
23 **FOURTH CAUSE OF ACTION**
24 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
25 **LABOR CODE §§226.7, 512**
26 **AGAINST ALL DEFENDANTS**

27 47. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
28 set forth in full herein.

1 48. Labor Code §512 requires employers to provide every employee with an uninterrupted
2 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

3 49. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
4 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
5 thereof.

6 50. For the applicable time period, Plaintiff regularly worked in excess of five hours per day,
7 and was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on
8 each day of work. Additionally, for the applicable time period, Plaintiff regularly worked in excess of
9 10 hours per day, and was thereby entitled to take uninterrupted two 30-minute meal periods and two 10-
10 minute rest periods on each day of work

11 51. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
12 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
13 applicable sections of the applicable 8 Code Regulations section, and the applicable Industrial Welfare
14 Commission Order.

15 52. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of the
16 applicable 8 Code Regulations section, and the applicable Industrial Welfare Commission Order.
17 Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite
18 minimum wage, whichever is greater, for each day that Plaintiff was denied such meal periods, and is
19 owed one hour of pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is
20 greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

21 53. From approximately April 1, 2019 to December 31, 2019, Plaintiff's statutory 30-minute
22 meal periods were missed, interrupted or cut short approximately 5 days per week for 39 weeks, or on
23 approximately 186 days. Consequently, Plaintiff is owed one hour of pay at \$23.00 for each day, or
24 **\$4,278.00** plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
25 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
26 approximately 186 days (5 days per week for 39 weeks). Consequently, Plaintiff is owed one hour of pay
27 at \$23.00 for each day, or **\$4,278.00**, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed
28 a total of **\$8,556.00**, plus interest thereon, for unpaid meal and rest periods for this time period.

1 54. From approximately January 1, 2020 to April 11, 2020, Plaintiff's statutory 30-minute
2 meal periods were missed, interrupted or cut short approximately 5 days per week for 14 weeks, or on
3 approximately 69 days. Consequently, Plaintiff is owed one hour of pay at \$23.00 for each day, or
4 **\$1,587.00** plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
5 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
6 approximately 69 days (5days per week for 14 weeks). Consequently, Plaintiff is owed one hour of pay
7 at \$23.00 for each day, or **\$1,587.00** plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed
8 a total of **\$3,174.00**, plus interest thereon, for unpaid meal and rest periods for this time period.

9 55. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
10 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

11 56. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
12 such amounts in the combined amount of **\$11,730.00**, pursuant to Labor Code §226.7(b), plus interest
13 thereon and costs of suit.

14
15 **FIFTH CAUSE OF ACTION**
16 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
17 **LABOR CODE §§226 ET SEQ.**
18 **AGAINST ALL DEFENDANTS**

19 57. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
20 set forth in full herein.

21 58. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
22 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
23 total deductions and net wages earned. An employer who violates these code sections is liable to its
24 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
25 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
26 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
27 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
28 at all.

1 59. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
2 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
3 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

4 60. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
5 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
6 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
7 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
8 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
9 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
10 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
11 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
12 of the required information, including hours actually worked.

13 61. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

14 62. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
15 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
16 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
17 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
18 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
19 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
20 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
21 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

22 63. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
23 approximately 52 times during the last year that Plaintiff worked for Defendants. Consequently,
24 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
25 amount of \$4,000.00, whichever is greater.

26 64. In addition thereto, for Defendant's 52 violations, Defendants are penalized \$250.00 for
27 the first violation, and the remainder of which Defendants are penalized \$1000.00 each, for a total due in
28 Labor Code §226.3 penalties of **\$51,250.00** (\$250.00 + \$1,000.00 x 51 subsequent pay periods).

1 65. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
2 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
3 applicable provisions, as well as attorneys' fees and costs.

4
5 **SIXTH CAUSE OF ACTION**
6 **FOR WAITING TIME PENALTIES**
7 **LABOR CODE §§201-203**
8 **AGAINST ALL DEFENDANTS**

9 66. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
10 set forth in full herein.

11 67. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
12 other compensation due immediately upon termination or within 72 hours of resignation, as required.
13 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
14 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
15 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
16 203.

17 68. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
18 203.

19 69. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
20 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
21 more than **\$5,520.00** in wait time penalties, calculated based on a daily average wage of \$184.00, times
22 30 days.

23 70. Based on Defendants' conduct as alleged herein, Defendants are liable for **\$5,520.00** in
24 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
25 fees and costs.

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SEVENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §2699
AGAINST ALL DEFENDANTS

71. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though set forth in full herein.

72. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

73. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

74. On September 3, 2020, more than 65 calendar days before filing this Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). The above-stated California Labor Code violations, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

75. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

76. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

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1 77. These penalties recoverable for Plaintiff alone totals approximately **\$10,300.00**.
2 Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

3 78. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the
4 recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

5
6 **EIGHTH CAUSE OF ACTION**
7 **FOR UNFAIR COMPETITION**
8 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
9 **AGAINST ALL DEFENDANTS**

10 79. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
11 set forth in full herein.

12 80. Defendants' violations of the applicable Code of Regulations section, the applicable
13 Industrial Welfare Commission Order, the above-stated Labor Code sections, including §2699, and other
14 applicable provisions, as alleged herein, including Defendants' failure and refusal to pay overtime wages,
15 Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate
16 wage and hour statements, and Defendants' failure to pay compensation due in a timely manner upon
17 termination or resignation, constitute unfair business practices in violation of Business & Professions
18 Code §§17200, et seq.

19 81. As a result of Defendants' unfair business practices, Defendants have reaped unfair
20 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
21 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

22 82. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
23 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
24 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from
25 Plaintiff.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

83. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than **\$10,000.00**;

84. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than **\$10,000.00**;

85. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, the applicable Code of Regulations section, the applicable Industrial Welfare Commission Order, in the amount of no less than **\$5,865.00**;

86. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512, in the amount of no less than **\$11,730.00**;

87. For damages pursuant to Labor Code §226 in the amount of no less than **\$4,000.00**;

88. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no less than **\$51,250.00**;

89. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less than **\$5,520.00**;

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1 90. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
2 **\$10,300.00** on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved
3 employees;

4 91. For post-judgment interest; and

5 92. For any other relief that is just and proper.

6 DATED: March 3, 2021

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8 By: 

Jace H. Kim, Esq.
Caros Andres Perez, Esq.
Javier Ramirez, Esq.
Attorney for Plaintiff
RODRIGO PORTILLO

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12 **JURY TRIAL DEMANDED**

13 Plaintiff demands trial of all issues by jury.

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15 DATED: March 3, 2021

16
17 By: 

Jace H. Kim, Esq.
Caros Andres Perez, Esq.
Javier Ramirez, Esq.
Attorney for Plaintiff
RODRIGO PORTILLO