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on behalf of himself and all others similarly situated

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

FRANCISCO JAVIER MENDEZ on behalf of
himself and all others similarly situated

Plaintiff,

vs.

BIRTCHE ANDERSON REALTY
MANAGEMENT, INC., a California
corporation, THE CARITAS CORPORATION,
a California corporation and DOES 1 through
50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof;**
- 3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;**
- 6) Failure to indemnify employee for expenditures; and**
- 7) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Plaintiff FRANCISCO JAVIER MENDEZ (hereinafter “Plaintiff”) on behalf of himself and all similarly situated Non-Exempt Employees employed by BIRTCHER ANDERSON REALTY MANAGEMENT, INC. (hereinafter “BIRTCHER ANDERSON”), directly and/or jointly with THE CARITAS CORPORATION (hereinafter “CARITAS CORP”) in California (hereinafter “Non-Exempt Employees” or “Class Members”), assert the following Class Action claim, pursuant to Code of Civil Procedure section 382, against Defendants BIRTCHER ANDERSON, CARITAS CORP. and DOES 1 through 50 (hereinafter collectively "Defendants").

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and/or workload requirements wherein Plaintiff and Non-Exempt Class Members were, amongst other statutory violations, not paid all lawful wages; not provided compliant rest and meal periods; not provided accurate itemized wage statements; not paid timely wages at termination, nor reimbursed for expenses incurred working for Defendants.

3. Plaintiff, on behalf of himself and Non-Exempt Employees, brings this action pursuant to Labor Code sections 201-203, 226, 226.7, 510, 512, 1194, 1197, 2802, Title 8, Ssection 11050 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and all Non-Exempt Employees, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on Defendants’ violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes

1 except those given by statute to other courts. The statutes here do not give jurisdiction to any
2 other court. The monetary damages and restitution sought by Plaintiffs exceed the minimum
3 jurisdiction limits of the California Superior Court and will be established according to proof at
4 trial.

5 6. Venue is proper to each Defendant pursuant to Code of Civil Procedure section
6 395 because they conduct substantial and continuous business activities in Sacramento County
7 and are within the jurisdiction of this Court for service of process purposes. Defendants employ
8 numerous Non-Exempt Employees in Los Angeles and other Counties throughout California.

9 III.

10 PARTIES

11 7. Plaintiff is, and at all times mentioned in this complaint was, a resident of
12 Santa Monica, California.

13 8. Upon information and belief, Defendant BIRTCHE ANDERSON provide
14 property management services for industrial, commercial and residential properties throughout
15 California.

16 9. Upon information and belief, Defendant CARITAS CORP provides affordable
17 housing through the acquisition of mobile homes.

18 10. The true names and capacities of Defendants, whether individual, corporate,
19 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
20 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
21 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
22 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
23 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
24 names and capacities of the Defendants designated hereinafter as DOES when such identities
25 become known.

26 11. Plaintiff is informed and believes, and based thereon alleges, that Defendants
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1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out
2 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
3 Defendant are legally attributable to the other Defendants.

4 5 IV.

6 **FACTUAL BACKGROUND**

7 12. Plaintiff was employed by BIRTHCER ANDERSON from on or about August
8 20, 2018 until about April 21, 2020. During his employment, at the direction of Defendants,
9 Plaintiff performed maintenance related job duties at the properties owned by CARITAS CORP.
10 He was typically scheduled to work five (5) days a week and eight (8) hours per day. He was also
11 required to be “on call” after the end of his shift. Plaintiff was also frequently required to perform
12 work “off the clock” for which he did not receive compensation. Plaintiff was also frequently
13 required to drive to other CARITAS CORP properties managed by Defendants.

14 13. During the liability period, Defendants failed to pay Plaintiff and Class Members
15 lawful wages for all hours worked. For instance, Plaintiff and Non-Exempt Employees were
16 frequently required to either be on call while off the clock and/or to perform work off the clock.
17 Plaintiff and, on information and belief, Class Members were not paid for the work performed “off
18 the clock.”

19 14. During the liability period, due to the demands of the work shifts, Plaintiff and
20 Class Members were required to work in excess of five (5) hours without being provided an
21 uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not compensated
22 one (1) hour of pay at their regular rate of compensation for each workday that a compliant meal
23 period was not provided.

24 15. During the liability period, due to the demands of work shifts, Plaintiff and Class
25 Members were at times required to work in excess of ten (10) hours without being provided a
26 second uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not
27 compensated one (1) hour of pay at their regular rate of compensation for each workday that a
28 compliant meal period was not provided.

16. During the liability period, due to the demands of work shifts, Plaintiff and Class Members Exempt Employees were not authorized or permitted a lawful minimum ten (10) minute rest period for every four hours or major fraction thereof worked. Plaintiff and, on information and belief, Non-Exempt Employees were not compensated one (1) hour of pay at his regular rate of compensation for each workday that rest periods were not provided, in violation of California labor laws, regulations, and IWC Wage Orders.

17. During the liability period, Defendants failed to pay Plaintiff and Class Members all earned wages in a timely manner; nor have they paid, upon or after termination, all compensation due, including but not limited to all wages owed and compensation for having failed to properly provide rest periods and meal periods.

18. Defendants also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Plaintiff and Class Members with accurate itemized wage statements reflecting total hours worked and appropriate rates of pay.

19. During the liability period, Plaintiff and Class Members were required to use their personal cell phones in the performance of their duties and were not reimbursed for the use of their phones.

20. Upon information and belief, during the relevant period, Defendants employed over fifty (50) employees in California in non-exempt hourly positions as maintenance supervisors, maintenance personnel, property managers and/or similar positions who worked at the properties owned by CARITAS CORP.

21. Plaintiff and Class Members, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V.

CLASS ACTION ALLEGATIONS

22. Plaintiff seeks to represent a Class comprised of and defined as: All persons who are employed or have been employed by Defendants in the state of California as hourly nonexempt

1 employees to work on properties owned by CARITAS CORP within four (4) years prior to the
2 date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to
3 as the “Class” or “Class Members”).

4 23. Plaintiff also seeks to represent Subclasses comprised of and defined as:

5 a. All Non-Exempt Employees employed by Defendants in California to
6 work on properties owned by CARITAS CORP within the liability period who were not
7 accurately paid all lawful wages, including proper overtime compensation, for all hours worked;

8 b. All Non-Exempt Employees employed by Defendants California to work
9 on properties owned by CARITAS CORP within the liability period who were not accurately
10 paid all lawful wages, including minimum wages, for all hours worked;

11 c. All Non-Exempt Employees employed by Defendants in California to
12 work on properties owned by CARITAS CORP within the statutory liability period who were not
13 provided a thirty (30) minute uninterrupted meal period by the end of the fifth hour when they
14 worked over five hours in a shift or a second thirty (30) minute uninterrupted meal period by the
15 end of the tenth hour when the shift is over ten hours and not provided compensation in lieu
16 thereof;

17 d. All Non-Exempt Employees employed by Defendants in California to
18 work on properties owned by CARITAS CORP within the liability period who were not
19 provided a minimum ten (10) minute rest period for every four (4) hours, or major fraction
20 thereof, worked per day and not provided compensation in lieu thereof;

21 e. All Non-Exempt Employees employed by Defendants in California to
22 work on properties owned by CARITAS CORP within the liability period who were not timely
23 paid all wages owed upon the termination of their employment;

24 f. All Non-Exempt Employees employed by Defendants in California to
25 work on properties owned by CARITAS CORP within the liability period and were not provided
26 with accurate and complete itemized wage statements; and

27 g. All Non-Exempt Employees employed by Defendants in California to
28 work on properties owned by CARITAS CORP within the liability period who were not

1 indemnified for expenses incurred in direct consequence of the discharge of their duty.

2 24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
3 or modify the class description with greater specificity or further division into subclasses or
4 limitation to particular issues.

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

8 **A. Numerosity**

9 26. The potential members of the Class as defined are so numerous that joinder of all
10 the members of the Class is impracticable. While the precise number of Class Members has not
11 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
12 and/or during the relevant time period employed, approximately over 50 Non-Exempt Employees
13 in California who are or have been affected by Defendants' unlawful practices as alleged herein.

14 **B. Commonality**

15 27. There are questions of law and fact common to the Class predominating over
16 any questions affecting only individual Class Members. These common questions of law and fact
17 include, without limitation:

18 i. Whether Defendants violated Labor Code sections 510, 1194 and applicable IWC
19 Wage Orders by failing to pay all earned wages, including overtime, to Non-Exempt Employees
20 who were on call and worked "off the clock" and in excess of eight (8) hours in a work day and/or
21 more than forty (40) hours in a workweek;

22 ii. Whether Defendants violated Labor Codes sections 200, 1194, and 1197 applicable
23 IWC Wage Orders by failing to pay all earned wages, including minimum wages, to Non-Exempt
24 Employees for time spent on call and working "off the clock;"

25 iii. Whether Defendants violated Labor Code sections 226.7, 512 and applicable IWC
26 Wage Order by failing to provide a statutory thirty (30) minute meal period to Non-Exempt
27 Employees on days in which they worked in excess of five (5) hours and failing to compensate
28 said employees one (1) hours wages in lieu thereof;

iv. Whether Defendants violated Labor Code sections 226.7, 512 and applicable IWC Wage Order by failing to provide a second statutory thirty (30) minute meal period to Non-Exempt Employees on days in which they worked in excess of ten (10) hours and failing to compensate said employees one (1) hours wages in lieu thereof;

v. Whether Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and failing to compensate said employees one (1) hours wages in lieu thereof;

vi. Whether Defendants violated Labor Code sections 201-203 and applicable IWC Wage Orders by failing to pay all earned wages and/or premium wages due and owing at the time that any Non-Exempt Employees' employment with Defendants terminated;

vii. Whether Defendants failed to maintain accurate records of Class Members' earned wages, work periods, meal periods and deductions;

viii. Whether Defendants failed to provide accurate itemized wage statements in violation of Labor Code § 226; and

ix. Whether Defendants violated Labor Code section 2802 by not indemnifying Non-Exempt employees for expenses incurred in being required to use their personal phones in the performance of their job duties.

C. Typicality

28. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

29. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

30. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

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

VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Owed
(Lab. Code §§ 510, 1194, 1197, IWC Wage Orders)
(Against All Defendants)

32. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

33. As alleged herein, Defendants violated California wage and hour law by failing to pay Plaintiff and Class Members for the time spent on call and for work performed off-the-clock without compensation.

34. Defendants' policies and/or practices resulted in Plaintiff and Class Members working in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper overtime compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

35. Defendants' policies and/or practices also resulted in Plaintiff and Class Members not receiving minimum wages for time spent working off-the-clock while subject to the control of Defendant and without pay.

1 36. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived
2 of compensation for all earned wages in amounts to be determined at trial, and are entitled to
3 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant
4 to Labor Code section 1194.

5 37. WHEREFORE, Plaintiff and Class Members request relief as described herein and
6 below.

7 **Second Cause of Action**

8 Failure to Provide Lawful Meal Periods
9 Or Compensation in Lieu Thereof
 (Lab. Code §§226.7, 512, IWC Wage Orders)
 (Against All Defendants)

10 38. Plaintiff repeats and incorporates herein by reference every allegation set forth
11 above, as though fully set forth herein.

12 39. As alleged herein, by their failure to provide a thirty (30) minute uninterrupted meal
13 periods by the end of the fifth hour for days which Plaintiff and Class Members worked in excess
14 of five (5) hours and failing to provide a similar second thirty (30) minute break by the end of the
15 10th hour for days which Plaintiff and Class Members worked in excess of 10 hours, Defendants
16 violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

17 40. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived
18 of premium wages and are entitled to recovery of such amounts, plus interest and penalties thereon
19 under Labor Code §226.7.

20 41. WHEREFORE, Plaintiff and Class Members request relief as described herein and
21 below.

22 **Third Cause of Action**

23 Failure to Provide Rest Periods
24 Or Compensation in Lieu Thereof
 (Lab. Code §§226.7, IWC Wage Orders)
 (Against All Defendants)

25 42. Plaintiff repeats and incorporates herein by reference every allegation set forth
26 above, as though fully set forth herein.

1 43. By their failure to authorize and permit a minimum ten (10) minute rest period for
2 every four (4) hours or major fraction thereof worked per day by Plaintiff and Class Members, and
3 failing to provide compensation for such non-provided rest periods, as alleged above, Defendants
4 willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

5 44. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived
6 of premium wages, and are entitled to recovery of such amounts, plus interest and penalties thereon
7 under Labor Code §226.7.

8 45. WHEREFORE, Plaintiff and Class Members request relief as described herein and
9 below.

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11 **Fourth Cause of Action**
12 Failure to Timely Pay Wages Due at Termination
13 Lab. Code §§ 201-203, IWC Wage Orders)
 (Against All Defendants)

14 46. Plaintiff incorporates by reference and realleges every allegation contained above,
15 as though fully set forth herein.

16 47. Sections 201 and 202 of the California Labor Code require Defendants to pay its
17 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
18 Code provides that if an employer willfully fails to timely pay such wages the employer must, as
19 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
20 action is commenced. The penalty cannot exceed 30 days of wages.

21 48. Plaintiff and Class Members are entitled to compensation for all forms of wages
22 earned, including compensation for non-provided rest and meal periods, but to date have not
23 received such compensation therefore entitling them Labor Code section 203 penalties.

24 49. More than 30 days have passed since Plaintiff and Class Members have left
25 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
26 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
27 Plaintiff and Class Members are entitled to 30 days' wages as a penalty under Labor Code section
28 203 for failure to pay legal wages.

1 50. WHEREFORE, Plaintiff and Class Members request relief as described herein and
2 below.

3 **Fifth Cause of Action**
4 Knowing and Intentional Failure to Comply with Itemized Employee
5 Wage Statement Provisions
6 (Lab. Code § 226, IWC Wage Orders)
7 (Against All Defendants)

8 51. Plaintiff repeats and incorporates herein by reference every allegation set forth
9 above, as though fully set forth herein.

10 52. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
11 statements all deductions from payment of wages and to accurately report total hours worked by
12 Plaintiff and Class Members. IWC Wage Orders require Defendants to maintain time records
13 showing, among others, when the employee begins and ends each work period, meal periods, split
14 shift intervals and total daily hours worked in an itemized wage statement, and must show all
15 deductions and reimbursements from payment of wages, and accurately report total hours worked
16 by Plaintiff and Class Members. On information and belief, Defendants have failed to record all
17 or some of the items delineated in Industrial Wage Orders and Labor Code §226.

18 53. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and Class
19 Members with wage statements that accurately showed the total hours they worked. Defendants
20 violated Section 226(a)(5) by failing to provide Plaintiff and Class Members with statements of
21 wages that accurately showed the net wages earned for regular hours worked, overtime hours
22 worked. Defendants violated Section 226(a)(9) by failing to provide Plaintiff and Class Members
23 with wage statements that accurately show the applicable hourly rates in effect during the pay
24 period and the corresponding number of hours worked at each hourly rate.

25 54. Plaintiff and Class Members have been injured by Defendants' actions by
26 rendering them unaware of the full compensation to which they were entitled under applicable
27 provisions of the California Labor Code and applicable IWC Wage Orders.

28 55. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
maximum of \$4,000.00 each for record-keeping violations.

1 56. WHEREFORE, Plaintiff and Class Members request relief as described herein and
2 below.

3 **Sixth Cause of Action**
4 Failure to Indemnify Employees for Expenditures
5 (Lab. Code § 2802)
6 (Against All Defendants)

7 57. Plaintiff repeats and incorporates herein by reference each and every allegation
8 set forth above, as though fully set forth herein.

9 58. As set forth above, Section 2802 of the California Labor Code requires
10 Defendants to indemnify employees for all necessary expenditures incurred as a direct
11 consequence of the discharge of their duties.

12 59. Defendants violated Section 2802 by, among other things, failing to indemnify
13 Plaintiff and Class Members for expenditures incurred for using personal cell phone in the
14 performance of job duties.

15 60. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
16 incurred expenditures in amounts to be determined at trial.

17 61. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
18 described herein and below.

19 **Seventh Cause of Action**
20 Violation of Unfair Competition Law
21 (Bus. & Prof. Code, §§ 17200-17208)
22 (Against All Defendants)

23 62. Plaintiff repeats and incorporates herein by reference each and every allegation set
24 forth above, as though fully set forth herein.

25 63. Business & Professions Code Section 17200 provides:

26 As used in this chapter, unfair competition shall mean and include any **unlawful, unfair**
27 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
28 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of
 Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

64. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

65. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

66. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

67. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff and Class Members are entitled to restitution of all wages which have been unlawfully withheld as a result of the business acts and practices described herein.

68. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

VII.

PRA YER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§203, 226;
6. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194, 2802;
- and
7. For further justifiable relief the Court deems proper.

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DEMAND FOR JURY TRIAL

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

Dated: September 8, 2020

JAMES HAWKINS, APLC



James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Richard Barnwell, Esq.

Attorneys for Plaintiff

FRANCISCO JAVIER MENDEZ