

1 Ramin R. Younessi, Esq. (SBN 175020)
2 **LAW OFFICES OF RAMIN R. YOUNESSI**
3 **A PROFESSIONAL LAW CORPORATION**
4 3435 Wilshire Boulevard, Suite 2200
Los Angeles, California 90010
Telephone: (213) 480-6200
Facsimile: (213) 480-6201

5 Attorney for Plaintiffs,
6 MARIA PADILLA, on behalf
7 of all others similarly situated, and also
8 on behalf of all aggrieved employees

Electronically FILED by
Superior Court of California,
County of Los Angeles
2/01/2024 5:30 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Trinh, Deputy Clerk

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

11 MARIA PADILLA, an individual, on behalf of
12 all others similarly situated, and also on behalf
of all aggrieved employees,

13 Plaintiffs,

14 v.

15 SCHENKER, INC., a New York corporation;
16 and DOES 1 through 20, inclusive,

17 Defendants.

Case No. **24STCV02778**

COMPLAINT – CLASS ACTION AND
PRIVATE ATTORNEY GENERAL ACT

1. **FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
2. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
3. **FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7);**
4. **FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE § 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. **UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**
8. **PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ).**

DEMAND FOR JURY TRIAL

1 PLAINTIFF, MARIA PADILLA, an individual on behalf of herself and all other similarly
2 situated employees and also on behalf of all aggrieved employees (hereinafter collectively referred to as
3 "Plaintiffs"), hereby files this Complaint against Defendant SCHENKER, INC., a Delaware
4 corporation; and DOES 1 through 20 (hereinafter collectively referred to as "Defendants"). Plaintiffs
5 are informed and believe, and thereon allege as follows:

6 7 **INTRODUCTION**

8 1. This is a civil action seeking recovery for Defendants' violations of the California Labor
9 Code, California Business and Professions Code ("B&PC"), the applicable Wage Orders issued by the
10 California Industrial Welfare Commission (hereinafter, the "IWC Wage Orders") and related common
11 law principles.

12 2. Plaintiffs' action seeks monetary damages and injunctive relief, including full restitution
13 from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

14 3. The acts complained of herein occurred, occur and will occur, at least in part, within the
15 time period from October 28, 2019, up to and through the time of trial for this matter. This is hereinafter
16 the "Class Period."

17 **RELEVANT JOB TITLES**

18 4. For introductory and general information only (and not to be considered a proposed class
19 definition), the relevant job titles held by the California citizens in this action are Defendants' "ground
20 operations" employees who are paid on an hourly basis (hereinafter including any of Defendants' job
21 positions with substantially similar titles and/or duties). These employees are hereinafter referred to as
22 "Class Plaintiffs."

23 5. The general obligations and responsibilities of Class Plaintiffs are virtually identical from
24 region to region, district to district, office to office, facility to facility, and employee to employee. Any
25 differences in job activities between the different individuals in these positions were and are legally
26 insignificant to the issues presented in this action.

1
2 **JURISDICTION AND VENUE**

3 6. This Court is the proper court pursuant to CCP §295(a) and CCP §395.5, and this action
4 is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein,
5 because Defendants maintain offices and transact business within Los Angeles County, and because the
6 work that is the subject of this action was performed by Class Plaintiffs in Los Angeles County.

7 7. The California Superior Court has jurisdiction in this matter because both the individual
8 and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits
9 of the Superior Court and will be established at trial, according to proof.

10 8. The California Superior Court also has jurisdiction in this matter because during their
11 employment with Defendants, Class Plaintiffs, were all California citizens and Defendant SCHENKER,
12 INC. conducted and transacted business throughout Los Angeles County. Further there is no federal
13 question at issue, as the issues herein are based solely on California statutes and law.

14
15 **THE PARTIES**

16 **PLAINTIFF PADILLA**

17 9. Plaintiff Maria Padilla ("PADILLA") is an individual over the age of eighteen (18) and is
18 now and at all times mentioned in this Complaint was a citizen of the State of California.

19 10. Plaintiff, PADILLA has worked for Defendants in various positions from on or about
20 November 10, 2012 to present, within the County of Los Angeles, California.

21 **DEFENDANT SCHENKER**

22 11. Defendant SCHENKER, INC., (hereinafter "SCHENKER") was and is a New York
23 corporation doing business at 3971 E. Airport Drive, in the City of Ontario, County of Los Angeles,
24 State of California. At all relevant times, Defendant SCHENKER employed 26 or more employees.

25 **DOES 1 – 20, INCLUSIVE**

26 12. DOES 1 to 20, inclusive are now, and/or at all times mentioned in this Complaint were
27 licensed to do business and/or actually doing business in California.

13. Class Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 20, inclusive and for that reason, DOES 1 to 20 are sued under such fictitious names pursuant to CCP §474.

14. Class Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, 'happenings, and circumstances alleged in this Complaint.

16. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

17. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

18. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership, and common enterprise.

19. Defendants, and each of them, at all times mentioned in this Complaint, concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

20. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

21. Defendants, and each of them, at all times mentioned in this Complaint, aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

1 22. Class Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
2 and each of them, including those defendants named as DOES 1-20 acted in concert with one another to
3 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one
4 another in the wrongful acts alleged herein, and/or attempted to do so. Class Plaintiffs are further
5 informed and believe, and based thereupon allege, that Defendants, and each of them, including those
6 defendants named as DOES 1-20, and each of them, formed and executed a conspiracy or common plan
7 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein
8 done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiffs harm.

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

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

13 24. Class Plaintiffs are informed and believe, and based thereon allege, that there exists such
14 a unity of interest and ownership between SCHENKER and DOES 1-20 (collectively "Defendants") that
15 the individuality and separateness of defendants have ceased to exist.

16 25. Class Plaintiffs are informed and believe, and based thereon allege, that despite the
17 formation of purported corporate existence, SCHENKER and DOES 1-20 are, in reality, one and the
18 same as SCHENKER, including, but not limited to because:

19 a. SCHENKER is completely dominated and controlled by DOES 1-20, who
20 personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden
21 and currently hide behind SCHENKER to perpetrate frauds, circumvent statutes, or accomplish some
22 other wrongful or inequitable purpose.

23 b. DOES 1-20 derive actual and significant monetary benefits by and through
24 SCHENKER 'S unlawful conduct, and by using SCHENKER as the funding source for their own
25 personal expenditures.

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

1 d. SCHENKER does not comply with all requisite corporate formalities to maintain
2 a legal and separate corporate existence.

3 e. The business affairs of SCHENKER and DOES 1-20 are, and at all times relevant
4 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
5 inextricable confusion. SCHENKER is, and at all times relevant hereto was, used by DOES 1-20 as a
6 mere shell and conduit for the conduct of certain of SCHENKER's affairs, and is, and was, the alter ego
7 of DOES 1-20. The recognition of the separate existence of SCHENKER would not promote justice, in
8 that it would permit SCHENKER to insulate themselves from liability to Plaintiffs for violations of the
9 Government Code, Labor Code, Business and Professions Code and other statutory violations. The
10 corporate existence SCHENKER and DOES 1-20 should be disregarded in equity and for the ends of
11 justice because such disregard is necessary to avoid fraud and injustice to Plaintiffs herein.

12 26. Accordingly, SCHENKER constitutes the alter ego of DOES 1-20, and the fiction of their
13 separate corporate existence must be disregarded.

14 27. As a result of the aforementioned facts, Class Plaintiffs are informed and believe, and
15 based thereon allege that SCHENKER and DOES 1-20 are Plaintiffs' joint employers by virtue of a joint
16 enterprise, and that Plaintiffs were employees of SCHENKER and DOES 1-20. Class Plaintiffs
17 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
18 and all Defendants shared control of the responsibility and influence of Class Plaintiffs as an employee,
19 either directly or indirectly, and the manner in which SCHENKER's business was and is conducted.

20 28. Alternatively, Class Plaintiffs are informed and believe and, based thereupon alleges, that
21 as and between DOES 1-20 and SCHENKER, (1) there is an express or implied agreement of assumption
22 pursuant to which DOES 1-20 agreed to be liable for the debts of SCHENKER, (2) the transaction
23 between DOES 1-20 and SCHENKER amounts to a consolidation or merger of entities, (3) DOES 1-20
24 is a mere continuation of SCHENKER, or (4) the transfer of assets to DOES 1-20 is for the fraudulent
25 purpose of escaping liability for SCHENKER's debts. Accordingly, DOES 1-20 are the successors of
26 SCHENKER, and are liable on that basis.

CLASS ACTION ALLEGATIONS

29. The Class Plaintiffs are entitled to the protections of the California Labor Code and the Wage Order. The Class Plaintiffs regularly worked in excess of 8 hours per day or 40 hours per week. Accordingly, the Class Plaintiffs were entitled to be paid overtime premiums for all hours worked over 8 hours in a single day or over 40 hours in a week. However, Class Plaintiffs were not paid all owed overtime compensation.

30. The Class Plaintiffs were not permitted to take duty-free rest periods of at least ten minutes every four hours worked, as required by California law. Class Plaintiffs were also not provided duty-free meal periods of at least thirty minutes every five hours worked.

31. Defendants failed to maintain working conditions that comply with the Wage Order, failed to timely provide them with accurate written wage statements, and failed to timely pay them earned wages during and upon termination of employment.

32. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a class action pursuant to CCP §382.

33. The putative classes that Class Plaintiffs will seek to certify are Defendants' similarly situated individuals who are presently employed or were formerly employed as employees paid on an hourly basis (including any of Defendants' job positions with substantially similar titles and/or duties) in California from October 28, 2019 through trial who were not: (1) paid overtime compensation for all overtime hours worked; (2) provided legally compliant meal periods, (3) provided legally compliant rest periods, (4) provided accurate wage statements, and (5) paid all earned wages timely upon termination of their employment.

34. In addition, Class Plaintiffs will seek to certify a subclass of those similarly situated individuals who were formerly employed by Defendants as hourly employees in California from October 28, 2019 through trial whose employment was terminated. Hereinafter, this is referred to as the "Terminated Employee SubClass."

1 35. The Class and the Terminated SubClass are herein collectively referred to as the
2 "Classes."

3 36. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary
4 to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at
5 such time when Class Plaintiffs seek to certify the Classes alleged herein.

6 37. Numerosity (CCP §382):

- 7 a. The potential quantity of members of the Classes as defined is so numerous that
8 joinder of all members is unfeasible and impractical;
- 9 b. The disposition of the claims of the members of the Classes through this class action
10 will benefit both the parties and this Court;
- 11 c. The quantity of members of the Classes is unknown to Class Plaintiffs at this time;
12 however, it is estimated that the membership of the Classes numbers greater than 100
13 individuals; and
- 14 d. The quantity and identity of such membership is readily ascertainable via inspection
15 of Defendants' records.

16 38. Superiority (CCP §382): The nature of this action and the nature of the laws available to
17 Class Plaintiffs make the use of the class action format particularly efficient and the appropriate
18 procedure to afford relief to Class Plaintiffs for the wrongs alleged herein, as follows:

- 19 a. California has a public policy which encourages the use of the class action device;
- 20 b. By establishing a technique whereby the claims of many individuals can be resolved
21 at the same time, the class suit both eliminates the possibility of repetitious litigation
22 and provides small claimants with a method of obtaining redress for claims which
23 would otherwise be too small to warrant individual litigation;
- 24 c. This case involves large corporate Defendants and a large number of individual Class
25 members with many relatively small claims and common issues of law and fact;
- 26 d. If each individual member of the Classes were required to file an individual lawsuit,
27 the large corporate Defendants would necessarily gain an unconscionable advantage
28 because Defendants would be able to exploit and overwhelm the limited resources of

1 each individual member of the Classes with Defendants' vastly superior financial and
2 legal resources;

3 e. Requiring each individual member of the Classes to pursue an individual remedy
4 would also discourage the assertion of lawful claims by the members of the Classes
5 who would be disinclined to pursue an action against Defendants because of an
6 appreciable and justifiable fear of retaliation and permanent damage to their lives,
7 careers, and well-being;

8 f. Proof of a common business practice or factual pattern, of which the members of the
9 Classes experienced, is representative of the Classes herein and will establish the right
10 of each of the members of the Classes to recover on the causes of action alleged
11 herein;

12 g. Absent class treatment, the prosecution of separate actions by the individual members
13 of the Classes, even if possible, would likely create:

14 i) a substantial risk of each individual Plaintiff presenting in separate,
15 duplicative proceedings the same or essentially similar arguments and
16 evidence, including expert testimony;

17 ii) a multiplicity of trials conducted at enormous expense to both the judicial
18 system and the litigants;

19 iii) inconsistent or varying verdicts or adjudications with respect to the
20 individual members of the Classes against Defendants;

21 iv) potentially incompatible standards of conduct for Defendants; and

22 v) potentially incompatible legal determinations with respect to individual
23 members of the Classes which would, as a practical matter, be dispositive
24 of the interest of the other members of the Classes who are not parties to
25 the adjudications or which would substantially impair or impede the
26 ability of the members of the Classes to protect their interests.

- h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;
- i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

39. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of Plaintiff PADILLA are typical of the claims of all members of the Classes she seeks to represent because she has been subject to all the violations described herein, as have all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.
- b. Adequacy: Plaintiffs PADILLA:
 - i) is an adequate representative of the Classes she seeks to represent;
 - ii) will fairly protect the interests of the members of the Classes;
 - iii) has no interests antagonistic to the member of the Classes; and
 - iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.
- c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:
 - i) Whether Defendants failed to pay Class Plaintiffs overtime compensation for all overtime hours worked;

- ii) Whether Defendants failed and continue to fail to authorize and permit legally-requisite rest breaks to Class Plaintiffs in violation of the Labor code and Section 1 of the IWC Wage Orders;
- iii) Whether Defendants failed and continue to fail to authorize and permit legally-requisite meal periods to Class Plaintiffs in violation of the Labor Code and Section 1 of the IWC Wage Orders;
- iv) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to Class Plaintiffs;
- v) Whether Defendants are derivatively liable pursuant to Labor Code §203 to the Terminated Employee SubClass;
- vi) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent competition within the meaning of B&PC §17200, et seq.;
- vii) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent business practices within the meaning of B&PC § 17200, et seq.;
- viii) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- ix) Whether the members of the Classes are entitled to injunctive relief;
- x) Whether the members of the Classes are entitled to restitution; and
- xi) Whether Defendants are liable for attorneys' fees and costs.

40. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. *Collins v. Rocha* (1972) 7 Cal.3d 232, 238).

1 **FIRST CAUSE OF ACTION**
2 **FOR FAILURE TO PAY WAGES DUE**
3 **LABOR CODE §§201, 226.7, 512, 1194**
4 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
5 **AGAINST ALL DEFENDANTS**

6 41. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
7 forth in full herein.

8 42. At all relevant times, Defendants failed and refused to pay Class Plaintiffs wages earned
9 and required by 8 Code of Regulations §11010, as set forth hereinabove. As alleged herein, Defendants
10 routinely failed to pay Plaintiffs the correct overtime compensation for overtime hours worked, and
11 failed to compensate them for missed rest and meal breaks.

12 43. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code
13 §510, 8 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

14 44. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct
15 and proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are
16 entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

17
18 **SECOND CAUSE OF ACTION**
19 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
20 **LABOR CODE §§510, 1194**
21 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
22 **AGAINST ALL DEFENDANTS**

23 45. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
24 forth in full herein.

25 46. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
26 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
27 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
28 hours in a single day. It also requires employers to pay their non-exempt employees overtime

1 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
2 work week and double-time compensation for any work done beyond the first eight hours on the seventh
3 consecutive day of work.

4 47. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code
5 §510, 8 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

6 48. At all relevant times, Class Plaintiffs were required to work more than eight hours per
7 day and/or more than 40 hours per workweek.

8 49. At all relevant times, Defendants failed and refused to pay Class Plaintiffs all the overtime
9 compensation required by Labor Code §510, 8 Code of Regulations §11010, and Industrial Welfare
10 Commission Order No. 1-2001.

11 50. From June 18, 2021 through trial, Class Plaintiffs worked overtime hours each week, all
12 of which should have been paid at 1.5 times their regular hourly wage rate at that time. Defendants
13 failed to pay Class Plaintiffs the requisite overtime wages in the four years immediately preceding the
14 filing of this complaint.

15 51. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct and
16 proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are entitled
17 to recover such amounts, plus interest thereon, attorneys' fees and costs.

18
19 **THIRD CAUSE OF ACTION**
20 **FOR FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
21 **LABOR CODE §§226.7, 516**
22 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
23 **AGAINST ALL DEFENDANTS**

24 52. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
25 forth in full herein.

26 53. Labor Code §226.7 requires an employer to provide every employee with an
27 uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or
28 substantial portion thereof, and further prohibits an employer from requiring "an employee to work

1 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
2 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
3 Standards Board, or the Division of Occupational Safety and Health.”

4 54. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or amend
5 working condition orders with respect to break periods, meal periods, and days of rest for any workers
6 in California consistent with the health and welfare of those workers.”

7 55. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and
8 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
9 work period. The authorized rest period time shall be based on the total hours worked daily at a rate of
10 ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need
11 not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.
12 Authorized rest period time shall be counted as hours worked for which there shall be no deduction from
13 wages.”

14 56. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
15 employee a rest period in accordance with the applicable provisions of this order, the employer shall pay
16 the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
17 the rest period is not provided.”

18 57. The Class Plaintiffs sometimes worked over 4 hours per shift.

19 58. The Class Plaintiffs were entitled to a rest period of not less than 10 minutes prior to
20 exceeding 4 hours of employment.

21 59. As a matter of Defendants’ established company policy, Defendants failed to always
22 authorize and permit all required rest periods established by Labor Code §226.7 and Labor Code §516
23 and Section 12 of the IWC Wage Order(s).

24 60. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b) which states
25 “if an employer fails to provide an employee a meal or rest period in accordance with an applicable order
26 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay
27 at the employee’s regular rate of compensation for each work day that the meal or rest period is not
28

1 provided," the Class Plaintiffs are entitled to damages in an amount equal to 1 additional hour of pay at
2 each employee's regular rate of compensation for each work day that the rest period was not provided.

3 61. Pursuant to Labor Code §218.6 and Civil Code § 3287, the Class Plaintiffs seek recovery
4 for prejudgment interest on all amounts recovered herein.

5
6 **FOURTH CAUSE OF ACTION**
7 **FOR FAILURE TO AUTHORIZE AND PERMIT MEAL BREAKS**
8 **LABOR CODE §§226.7, 512**
9 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
10 **AGAINST ALL DEFENDANTS**

11 62. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
12 forth in full herein.

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

15 64. Class Plaintiffs regularly worked in excess of five hours per day and were thereby entitled
16 to take uninterrupted 30-minute meal periods on each day of work.

17 65. Defendants failed and refused to provide the Class Plaintiffs with uninterrupted meal and
18 rest periods, and failed to compensate Class Plaintiffs, and other similarly situated employees, for missed
19 meal and rest periods, as required by Labor Code §§226.7 and the applicable sections of 8 Code of
20 Regulations §11010 and Industrial Welfare Commission Order No. 1-2001, as follows.

21 66. Class Plaintiffs have been deprived of wages for missed meal breaks due in amounts to
22 be determined at trial.

23 67. As alleged herein, Class Plaintiffs are not exempt from the meal break requirements of 8
24 Code of Regulations §11010 and Industrial Welfare Commission Order No. 1-2001. Consequently,
25 Class Plaintiffs are owed one hour of pay at his or her then regular hourly rate, or the requisite minimum
26 wage, whichever is greater, for each day that he or he was denied such meal periods.

68. Class Plaintiffs have been deprived of his or her rightfully earned compensation for missed meal breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

69. Thus, for the entirety of the time periods set forth above, Class Plaintiffs are entitled to recover such amounts to be determined at trial pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

FIFTH CAUSE OF ACTION
|
FOR FAILURE TO TIMELY FURNISH ACURATE ITEMIZED WAGE STATEMENTS
|
LABOR CODE §§226
|
(ON BEHALF OF THE CLASS PLAINTIFFS)
|
AGAINST ALL DEFENDANTS

70. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

71. Labor Code §226(a) states in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ... (4) all deductions ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid ... (8) the name and address of the legal entity that is the employer, and (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”

72. Further, the IWC Wage Orders §12(A) states in pertinent part: “(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... (5) Total hours worked in the payroll period and applicable rates of pay”

1 73. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §12(A), California
2 employers are required to maintain accurate records pertaining to the total hours worked for Defendants
3 by Class Plaintiffs, including but not limited to, beginning and ending of each work period, meal period
4 and split shift interval, the total daily hours worked, and the total hours worked per pay period and
5 applicable rates of pay.

6 74. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders
7 §12(A), Defendants did not and still do not furnish each of the Class Plaintiffs with an accurate itemized
8 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all
9 deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective
10 pay period and the corresponding number of hours worked at each hourly rate by each respective
11 individual and/or pertaining to the total hours worked for Defendants by the Class Plaintiffs, including
12 but not limited to, beginning and ending of each work period, meal period and split shift interval, the
13 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

14 75. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an employee
15 suffers injury if the employer fails to provide accurate and complete information as required by any one
16 or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot promptly and easily ascertain
17 requisite information without reference to other documents or information.

18 76. Here, the Class Plaintiffs suffered injury because Defendants failed to provide accurate
19 and complete information as required by one or more items listed in Labor Code §226(a)(1)-(9) and the
20 Class Plaintiffs could not and cannot promptly and easily ascertain requisite information without
21 reference to other documents or information.

22 77. In addition, the Class Plaintiffs have suffered injury as a result of Defendants' failure to
23 maintain accurate records for the Class Plaintiffs in that the Class Plaintiffs were not timely provided
24 written accurate itemized statements showing all requisite information, including but not limited to total
25 hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code
27 §226 and the IWC Wage Orders §12(A), such that the Class Plaintiffs were misled by Defendants as to
28 the correct information regarding various items, including but not limited to total hours worked by the

1 employee, net wages earned and all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate.

3 78. The actual injuries suffered by the Class Plaintiffs as a result of Defendants' knowing
4 and intentional failure to maintain accurate records for the Class Plaintiffs include but are not limited to:

- 5 a. Confusion over whether they received all wages owed them by Defendants;
- 6 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 7 c. Being forced to engage in mathematical computations to analyze whether
- 8 Defendants' wages in fact compensated for all hours worked;
- 9 d. The inability to accurately calculate wage rates complicated by the fact that wage
- 10 statement information required by Labor Code §226 is missing;
- 11 e. That such practice prevents the Class Plaintiffs from being able to effectively
- 12 challenge information on their wage statements; and/or
- 13 f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery
- 14 required to collect and analyze the very information that California law requires.

15 79. Pursuant to Labor Code §226(e), the Class Plaintiffs are entitled to actual damages or
16 four thousand dollars (\$4,000.00), whichever is greater.

17 80. Pursuant to Labor Code §226(g), the currently-employed members of the Class Plaintiffs
18 are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

19 81. Pursuant to Labor Code §226(e) and/or §226(g), the Class Plaintiffs are also entitled to
20 an award of costs and reasonable attorneys' fees.

21
22 **SIXTH CAUSE OF ACTION**
23 **FOR WAITING TIME PENALTIES**
24 **LABOR CODE §203**

25 **(ON BEHALF OF THE TERMINATED EMPLOYEE SUBCLASS)**

26 **AGAINST ALL DEFENDANTS**

27 82. The Terminated Employee SubClass re-alleges and incorporates by reference the above
28 paragraphs as though set forth in full herein.

1 83. Labor Code §203 provides that if an employer willfully fails to pay, without abatement
2 or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is
3 discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30)
4 days from the due date thereof, until paid or until an action therefore is commenced.

5 84. The members of the Terminated Employee SubClass are no longer employed by
6 Defendants as they were either discharged from or quit Defendants' employ.

7 85. Defendants had a consistent and uniform policy, practice and procedure of willfully
8 failing to pay the earned wages of Defendants' former employees, as set forth above, according to
9 amendment or proof.

10 86. As set forth above, Defendants willfully failed to pay the members of the Terminated
11 Employee SubClass their entire wages due and owing at the time of their termination or within seventy-
12 two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

13 87. Defendants' willful failure to pay wages to the members of the Terminated Employee
14 SubClass violates Labor Code §203 because Defendants knew or should have known wages were due
15 to the members of the Terminated Employee SubClass, as set forth above, but Defendants failed to pay
16 them.

17 88. Thus, the members of the Terminated Employee SubClass are entitled to recovery
18 pursuant to Labor Code §203, as well as attorneys' fees and costs.

19
20 **SEVENTH CAUSE OF ACTION**
21 **FOR UNFAIR COMPETITION**
22 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
23 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
24 **AGAINST ALL DEFENDANTS**

25 89. Class Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
26 though set forth in full herein.

27 90. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include
28 any unlawful, unfair or fraudulent business act..."

1 91. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
2 penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties
3 available under all other laws of this state.”

4 92. B&PC §17204 provides that an action for relief from unfair competition may be
5 prosecuted by any person who has suffered injury in fact and has lost money or property as a result of
6 such unfair competition.

7 93. Defendants’ have engaged in unlawful, unfair and fraudulent business acts or practices
8 prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the
9 complaint, thereby depriving Plaintiffs of the minimum working standards and conditions due to them
10 under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

11 94. Defendants have engaged in unfair business practices in California by practicing,
12 employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by
13 requiring employees to perform the labor services complained of herein without the requisite
14 compensation.

15 95. Defendants’ use of such practices constitutes an unfair business practice, unfair
16 competition and provides an unfair advantage over Defendants’ competitors.

17 96. Plaintiffs have suffered injury in fact and have lost money or property as a result of such
18 unfair competition.

19 97. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to
20 restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair
21 practices complained of herein.

22 98. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will
23 continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

24 99. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction
25 prohibiting Defendants from engaging in the foregoing conduct.

26 100. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary
27 relief sought from Defendants.

EIGHTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §2699
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

101. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

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

103. Class Plaintiffs were aggrieved employees within the meaning of Labor Code §2699(a) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against them, as previously pleaded in this Complaint.

104. On October 27, 2020, more than 65 calendar days before filing this Complaint, Class Plaintiffs provided written notice by online filing to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

105. Under Labor Code §2699.3(c)(2)(A), Defendants may cure alleged violations within 33 calendar days of the postmarked date of the written notice sent by Class Plaintiffs. As of the filing of this Complaint, Defendants have not cured such violations within the specified time period. Consequently, Class Plaintiffs may now commence a civil action, pursuant to Labor Code §2699.3

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

107. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per

1 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
2 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
3 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
4 provide for a penalty, §§201, 226, 226.3, 246.5, and 558.

5 108. Plaintiffs, as a personal representative of the general public, will and does seek to recover
6 any and all penalties for each and every violation shown to exist or to have occurred during the one year
7 period before Plaintiffs filed Notice with the LWDA of her intent to bring this action, in an amount
8 according to proof, as to those penalties that are otherwise only available to public agency enforcement
9 actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the
10 penalties recovered being reimbursed to the State of California and the Labor and Workforce
11 Development Agency. Plaintiffs are also entitled to reasonable attorney's fees and costs, and 25% of the
12 recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i). This claim under Labor Code §2699
13 and §2699.3 et seq., does not require class certification as it is brought pursuant to the Private Attorneys
14 General Act.

15
16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs pray:

18 1. That the Court issue an Order certifying the Classes herein, appointing the named
19 Plaintiff PADILLA as representative of all others similarly situated, and appointing the law firm(s)
20 representing the named Plaintiff PADILLA as counsel for the Class Plaintiffs;

21 As to the First Cause of Action for Failure to Pay Wages:

- 22 a. For recovery of the unpaid balance of the full amount of wages due and owing, according
23 to proof;
- 24 b. For prejudgment interest as allowed by Labor Code §§201, 226.7, 512, 558, 1182.12, 1194,
25 1194.2;
- 26 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or
27 Labor Code §1194(a);
- 28

1 As to the Second Cause of Action for Failure to Pay Overtime Compensation:

- 2 a. For recovery of the unpaid balance of the full amount of overtime wages due and owing,
3 according to proof;
4 b. For prejudgment interest as allowed by Labor Code § 510;
5 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or
6 Labor Code §1194(a);
7

8 As to the Third Cause of Action for Failure to Authorize and Permit Rest Periods:

- 9 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid
10 Rest Period Class for each workday that a paid rest period was not provided
11 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287;
12

13 As to the Fourth Cause of Action for Failure to Authorize and Permit Meal Periods:

- 14 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid
15 Meal Period Class for each workday that a meal period was not provided;
16 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287
17

18 As to the Fifth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements:

- 19 a. For damages according to proof;
20 b. For recovery as authorized by Labor Code §226(e) and 226.3;
21 c. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or
22 §226(g);
23

24 As to the Sixth Cause of Action for Derivative Violations of Labor Code §203:

- 25 a. For recovery as authorized by Labor Code §203;
26 b. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §203 and/or
27 Labor Code §1194(a);
28

1 As to the Seventh Cause of Action for Unfair Business Practices:

- 2 a. For an accounting, under the administration of Plaintiffs and/or the receiver and subject to
3 Court review, to determine the amount to be returned by Defendants, and the amounts to be
4 refunded to members of the Classes who are owed monies by Defendants;
- 5 b. For an Order requiring Defendants to identify each of the members of the Classes by name,
6 home address, home telephone number and, if available, email address;
- 7 c. For an Order requiring Defendants to make full restitution and payment pursuant to
8 California law;
- 9 d. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from
10 engaging in the acts complained of herein;
- 11 e. For all other appropriate injunctive, declaratory and equitable relief;
- 12 f. For interest to the extent permitted by law;
- 13 g. For an award of attorneys' fees and costs incurred in the investigation, filing and
14 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code
15 §1194 and/or any other applicable provision of law;
- 16

17 As to the Eighth Cause of Action for Derivative Violations of Labor Code §2699:

- 18 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent
19 and apart from other penalties in the Labor Code and for Labor Code violations without a
20 specific penalty, in the amount of \$100 for each aggrieved employee per pay period for each
21 violation, and \$200 for each aggrieved employee per pay period for each subsequent
22 violation;
- 23 b. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent and
24 apart from other penalties in the Labor code, as follows: (i) For any violation, fifty dollars
25 (\$50) for each aggrieved underpaid employee for each pay period for the employee was
26 underpaid, and an additional penalty amount sufficient to recover underpaid wages; (ii) For
27 each subsequent violation, one hundred dollars (\$100) for each aggrieved underpaid
28 employee for each pay period for which the employee was underpaid, and an additional

penalty amount sufficient to recover the underpaid wages; and (iii) for these amounts to be paid to the aggrieved employees;

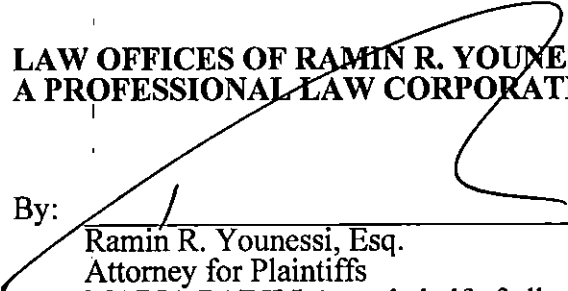
- c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §2699(g)(1) and any other applicable statute;

As to All Causes of Action:

- a. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

DATED: February 1, 2024

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

By: 

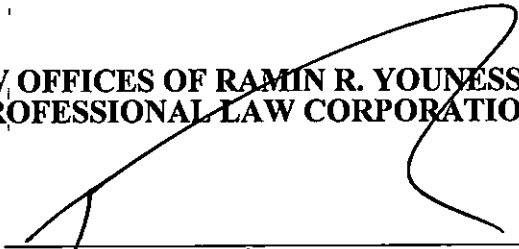
Ramin R. Younessi, Esq.
Attorney for Plaintiffs
MARIA PADILLA, on behalf of all others
similarly situated, and also on behalf of all
aggrieved employees

JURY TRIAL DEMANDED

Plaintiffs demand trial of all issues by jury.

DATED: February 1, 2024

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

By: 

Ramin R. Younessi, Esq.
Attorney for Plaintiffs
MARIA PADILLA, on behalf of all others
similarly situated, and also on behalf of all
aggrieved employees