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individually and as a proxy for the State of California

FILED
Superior Court of California
County of Los Angeles
12/31/2020

Sherri R. Carter, Executive Officer / Clerk of Court
By: A. Flores Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

[UNLIMITED CIVIL]

ANTHONY QUINTEROS, an individual, and
as a proxy for the State of California,

Plaintiff,

vs.

13333 FENTON AVENUE, LLC d/b/a
MOUNTAIN VIEW CONVALESCENT
HOSPITAL, a limited liability company; and
DOES 1 through 5, inclusive,

Defendants.

Case No.: 20STCV48672

*Assigned for All Purposes to the Honorable
Judge Michelle Williams Court in Dept 74*

FIRST AMENDED COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code § 510**
- 2. Unpaid Overtime Wages**
- 3. Unpaid Wages and Failure to Pay Minimum Wages**
- 4. Failure to Reimburse and Indemnify for Expenditures**
- 5. Failure to Provide Meal and Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
- 6. Failure to Provide Accurate Itemized Wage Statements**
- 7. Labor Code § 226(f) Penalty**
- 8. Private Attorneys General Act**

Complaint Filed: 12/21/2020

DEMAND FOR JURY TRIAL

Plaintiff, ANTHONY QUINTEROS, alleges as follows:

JURISDICTION AND VENUE

1 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
2 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
3 and/or Defendants confirmed and ratified said conduct and omissions.

4 9. Plaintiff is informed and believes and on that basis alleges that at all times relevant
5 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's
6 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
7 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
8 permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all
9 relevant times alleged herein.

10 10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein,
11 the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of
12 operations, centralized control of labor relations, common management, and common ownership or
13 financial control.

14 GENERAL ALLEGATIONS

15 11. Plaintiff worked for Defendant as a non-exempt hourly employee from December 2017
16 until October 29, 2019. He worked as a maintenance supervisor and worked long hours each day.
17 Defendant required Plaintiff to perform work before starting his shift by picking up supplies but did not
18 pay Plaintiff any wages for such time. Defendant also called Plaintiff on his days off to perform work
19 but did not pay Plaintiff wages for such time. Plaintiff also worked over eight hours per day or forty per
20 week, but Defendant did not pay Plaintiff overtime wages for such time.

21 12. Defendant did not provide uninterrupted rest breaks to Plaintiff and other department
22 heads because Defendant claimed they were ineligible. And the non-department head co-workers would
23 have their rest breaks interrupted.

24 13. Defendant did not provide uninterrupted meal breaks to Plaintiff and his co-workers.
25 Defendant would interrupt the meal breaks with work tasks.

26 14. Defendant did not provide expense payments or reimbursements to Plaintiff or his co-
27 workers, even though Defendant required them to incur mileage and required them to regularly use their
28 personal cell phones for work-purposes.

FIRST CAUSE OF ACTION

**FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510
(AGAINST ALL DEFENDANTS AND DOES 1-5)**

16. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

17. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

18. “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Lab. Code § 510(a).

19. On numerous occasions during Plaintiff's employment, he worked more than eight hours per workday and more than 40 hours per workweek and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

20. Any “person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

21. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has

1 worked a substantial number of hours without receiving overtime compensation, at the applicable rate,
2 from Defendants, in accordance with California law.

3 22. Plaintiff has been damaged in an amount equal to the compensation to which he was
4 entitled but was unlawfully deprived by Defendants, subject to proof at trial.

5 23. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the
6 legal rate on the overtime wages owed to Plaintiff by Defendants.

7 24. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of
8 attorneys' fees, and costs.

9 **SECOND CAUSE OF ACTION**

10 **UNPAID OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

12 25. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as
13 though set forth herein in full again.

14 26. Any employee receiving less than the legal overtime compensation, pursuant to the Fair
15 Labor Standards Act at 29 United States Code section 201, *et seq.*, applicable to the employee is entitled
16 to recover in a civil action the unpaid balance of the full amount of overtime compensation including
17 liquidated damages and reasonable attorney's fees. 29 U.S.C. § 216(b). Thus, Plaintiff is also entitled
18 to liquidated damages in amount equal to unpaid overtime wages.

19 **THIRD CAUSE OF ACTION**

20 **UNPAID WAGES AND FAILURE TO PAY MINIMUM WAGES**

21 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

22 27. "Wages" includes all amounts for labor performed by employees of every description,
23 including commission basis. Lab. Code § 200(a).

24 28. "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
25 earned by any person in any employment are due and payable twice during each calendar month, on
26 days designated in advance by the employer as the regular paydays." Lab. Code § 204(a).

27 29. "Notwithstanding any agreement to work for a lesser wage, any employee receiving less
28 than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the

unpaid balance of the full amount of this minimum wage . . . , including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194(a).

30. Defendants failed to pay Plaintiff's wages for the off the clock work. As a result, Defendants failed to pay Plaintiff the legal minimum wage.

31. Plaintiff has been harmed by Defendants' failure to minimum wages due in an amount according to proof at trial.

32. An employee receiving less than the legal minimum wage or legal overtime compensation "is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194.

33. An employee receiving less than the minimum wage set by an IWC order "shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Lab. Code § 1194.2.

34. Plaintiff is entitled to the unpaid balance of the full wages due, minimum wages due, liquidated damages, interest, and attorneys' fees.

35. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a).

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

36. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

37. California Labor Code § 2802(a) provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties"

1 38. Labor Code “Section 2802 is designed to prevent employers from passing their operating
2 expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

3 39. Defendants violated Labor Code Section 2802 by passing on their operating expenses to
4 Plaintiff, in violation of Labor Code § 2802(a).

5 40. Plaintiff has been damaged by Defendant’s failure to pay or reimburse work expenses in
6 an amount according to proof at trial.

7 41. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is
8 entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest
9 thereon, and an award of attorneys’ fees, and costs.

10 42. “Any employer or other person acting on behalf of an employer, who violates, or causes
11 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
12 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6,
13 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

16 **OR COMPENSATION IN LIEU THEREOF IN VIOLATION OF LABOR CODE § 226.7**

17 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

18 43. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as
19 though set forth herein in full again.

20 44. California Labor Code section 226.7 provides that “An employer shall not require an
21 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
22 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety
23 and Health Standards Board, or the Division of Occupational Safety and Health.” Lab. Code § 226.7(b).

24 45. “If an employer fails to provide an employee a meal or rest or recovery period in
25 accordance with a state law, including, but not limited to, an applicable statute or applicable regulation,
26 standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards
27 Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one
28

1 additional hour of pay at the employee's regular rate of compensation for each workday that the meal or
2 rest or recovery period is not provided." Lab. Code § 226.7(c).

3 46. Relevant Wage Orders of the Industrial Welfare Commission ("IWC"), applicable to
4 Defendant, such as Wage Order No. 4-2001 section 12, provide that "Every employer shall authorize
5 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each
6 work period. The authorized rest period time shall be based on the total hours worked daily at the rate of
7 ten (10) minutes net rest time per four (4) hours or major fraction thereof."

8 47. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 4-
9 2001 section 11, provide that "No employer shall employ any person for a work period of more than five
10 (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more
11 than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the
12 employer and the employee."

13 48. California Labor Code section 512(a) provides that an employer may not employ an
14 employee for a work period of more than five hours per day without providing the employee with a meal
15 period of not less than 30 minutes, except that if the total work period per day of the employee is no
16 more than six hours, the meal period may be waived by mutual consent of both the employer and
17 employee.

18 49. Defendants regularly required Plaintiff to work without being provided the opportunity to
19 have uninterrupted rest breaks. Defendants regularly did not allow him the opportunity to be relieved of
20 his duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing him with rest
21 breaks.

22 50. Defendants regularly required Plaintiff to work more than 5 hours without being provided
23 with a duty-free meal period with relief of all duties. Defendants did not compensate Plaintiff in lieu of
24 providing him with meal breaks.

25 51. Pursuant to Labor Code section 512, Plaintiff is entitled to compensation of one
26 additional hour of pay at his regular rate of compensation for each workday that the meal period was not
27 provided. Pursuant to Labor Code section 226.7, Plaintiff is entitled to compensation of one additional
28 hour of pay at his regular rate of compensation for each workday that the meal period was not provided,

1 and one additional hour of pay for each workday that the rest period was not provided pursuant to
2 *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

3 52. “Any employer or other person acting on behalf of an employer, who violates, or causes
4 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
5 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6,
6 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

10 53. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as
11 though set forth herein in full again.

12 54. California Labor Code section 226(a) provides that every employer shall, at the time of
13 each payment of wages, furnish each of his or her employees, either as a detachable part of the check,
14 draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or
15 cash, an accurate itemized statement in writing showing accurate: (1) gross wages earned, (2) total hours
16 worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned
17 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
18 that all deductions made on written orders of the employee may be aggregated and shown as one item,
19 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
20 of the employee and only the last four digits of his or her social security number or an employee
21 identification number other than a social security number, (8) the name and address of the legal entity
22 that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of
23 Section 1682, the name and address of the legal entity that secured the services of the employer, and (9)
24 all applicable hourly rates in effect during the pay period and the corresponding number of hours worked
25 at each hourly rate by the employee. . .” A copy of the itemized statement shall be kept on file by the
26 employer for at least three years. Lab. Code § 226(a). A “copy” includes a duplicate of the itemized
27 statement provided to an employee or a computer-generated record that accurately shows all of the
28 information required by Labor Code Section 226(a). Lab. Code § 226(a).

55. Defendant knowingly and intentionally failed to provide an itemized statement in writing showing accurate information required by Labor Code section 226(a).

56. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

57. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing the accurate gross wages earned and total hours worked, and the employee cannot promptly and easily determine from the wage statement alone the accurate information required by statute. Lab. Code § 226(e).

58. As a result of the knowing and intentional failure to provide wage statements, Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendants are liable to Plaintiff for the amounts provided by California Labor Code § 226(e).

59. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

60. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

SEVENTH CAUSE OF ACTION

LABOR CODE § 226(f) PENALTY

(AGAINST ALL DEFENDANTS AND DOES 1-5)

61. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

62. An employer that is required to keep the information required by Labor Code § 226(a) shall afford current and former employees the right to inspect or copy records pertaining to their

1 employment. Lab. Code § 226(b). An employer who receives a written or oral request to inspect or copy
2 records pursuant to Labor Code § 226(b) shall comply with the request as soon as practicable, but no
3 later than 21 calendar days from the date of the request. Lab. Code § 226(c). Defendant violated Labor
4 Code § 226(b)(c) by failing to timely provide Plaintiff with the complete Labor Code section 226(a)
5 records pertaining to his employment.

6 63. A failure by an employer to permit a current or former employee to inspect or copy
7 records within the time set forth in Labor Code § 226(c) entitles the current or former employee to
8 recover a seven-hundred-fifty-dollar (\$750) penalty from the employer. Lab. Code § 226(f).

9 **EIGHTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

12 64. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though
13 set forth herein in full again.

14 65. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”),
15 “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides
16 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any
17 of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code,
18 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
19 himself or herself and other current or former employees pursuant to the procedures specified in Section
20 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which
21 a civil penalty is specifically provided, there is established a civil penalty for a violation of these
22 provisions.” Lab. Code § 2699(f).

23 66. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46
24 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387
25 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one
26 aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a
27 representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a
28

PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

67. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

Labor Code Violations §§ 2802, 226.7, 512, 510, 1182.12, 1197, 1194, 204, 1198, 226(a), 1174(d), 558, 210, 226.3, 1174.5, 1197.1, § 2802

68. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

Cochran v. Schwan’s Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov. 25, 2014).

69. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only show that he was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

70. Defendant did not reimburse or pay Plaintiff or the other aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

71. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

§ 226.7

72. “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Lab. Code § 226.7(b).

73. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 15-2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

74. As set forth above, Defendant did not permit Plaintiff and other aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks. Defendant did not compensate Plaintiff and the other aggrieved employees in lieu of providing them with rest breaks. As such, Defendant violated Labor Code section 226.7.

75. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-2001 section 11, provide that “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an —on duty meal period and counted as time worked. An —on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal

1 period is agreed to. The written agreement shall state that the employee may, in writing, revoke the
2 agreement at any time.”

3 76. As set forth above, Defendant did not permit Plaintiff and other aggrieved employees
4 uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks.
5 Defendant did not compensate Plaintiff and the other aggrieved employees in lieu of providing them with
6 meal breaks relieved of all duties. Defendant did not compensate Plaintiff and the other aggrieved
7 employees for the on-duty meal periods. As such, Defendant violated California Labor Code section
8 226.7.

9 77. California Labor Code section 226.7 does not provide for its own self-contained “civil
10 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
11 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
12 aggrieved employee per pay period for each subsequent violation.

13 **§ 512**

14 78. “An employer may not employ an employee for a work period of more than five hours per
15 day without providing the employee with a meal period of not less than 30 minutes, except that if the total
16 work period per day of the employee is no more than six hours, the meal period may be waived by mutual
17 consent of both the employer and employee. An employer may not employ an employee for a work period
18 of more than 10 hours per day without providing the employee with a second meal period of not less than
19 30 minutes.” Lab. Code § 512(a).

20 79. As set forth above, Defendant did not permit Plaintiff and other aggrieved employees
21 uninterrupted duty-free meal periods with the opportunity to be relieved of all duties for meal breaks on
22 the days they worked more than five hours.

23 80. California Labor Code section 512 does not provide for its own self-contained “civil
24 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
25 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
26 aggrieved employee per pay period for each subsequent violation.

27 **§ 510**
28

81. “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Lab. Code § 510(a).

82. On numerous Defendant required Plaintiff to perform work before starting his shift by picking up supplies but did not pay Plaintiff any wages for such time. Defendant also called on his days off to perform work but did not pay Plaintiff wages for such time. Plaintiff and his co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek. They were not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code § 510.

83. California Labor Code section 510 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty 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.

§ 1182.12

84. On and after July 1, 2016, the minimum wage for all industries shall be not less than ten dollars per hour. Lab. Code § 1182.12(a).

85. On numerous occasions Defendant required Plaintiff to perform work before starting his shift by picking up supplies but did not pay Plaintiff any wages for such time. Defendant also called on his days off to perform work but did not pay Plaintiff wages for such time. This resulted in Plaintiff and the aggrieved employees working without minimum wage compensation. Therefore, Defendant violated Labor Code § 1182.12. California Labor Code section 1182.12 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty 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.

§ 1197

86. “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” Lab. Code § 1197. Labor Code section 1173 defines commission as Industrial Welfare Commission.

87. Sections 4(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 15-2001, 16-2001 provide that, “Every employer shall pay to each employee wages not less than the following: (1) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following: . . . (b) Eleven dollars (\$11.00) per hour for all hours worked, effective January 1, 2018; (2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following: . . . and (b) Ten dollars and fifty cents (\$10.50) per hour for all hours worked, effective January 1, 2018.”

88. On numerous occasions Defendant required Plaintiff to perform work before starting his shift by picking up supplies but did not pay Plaintiff any wages for such time. Defendant also called on his days off to perform work but did not pay Plaintiff wages for such time. Plaintiff believes Defendant did this to other employees. This resulted in Plaintiff and the aggrieved employees working without being paid a minimum wage. Therefore, Defendant violated IWC Wage Orders and consequently violated Labor Code § 1197. California Labor Code section 1197 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty 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.

§ 1194

89. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest thereon, reasonable attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

90. On numerous occasions Defendant required Plaintiff to perform work before starting his shift by picking up supplies but did not pay Plaintiff any wages for such time. Defendant also called on his days off to perform work but did not pay Plaintiff wages for such time. Plaintiff believes Defendant did this to other employees. This resulted in Plaintiff and the aggrieved employees working without being

1 paid a minimum wage. Therefore, Defendant violated IWC Wage Orders and consequently violated Labor
2 Code § 1194. California Labor Code section 1194 does not provide for its own self-contained “civil
3 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
4 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
5 aggrieved employee per pay period for each subsequent violation.

6 **§ 204**

7 91. Labor Code Section 204(b)(1) provides that “all wages earned for labor in excess of
8 the normal work period shall be paid no later than the payday for the next regular payroll period.”

9 92. Plaintiff and aggrieved employees worked more than 8 hours per day and forty per week.
10 They were not compensated for those overtime hours worked more than eight per day and 40 per week.
11 As a result, they worked in excess of 40 hours per week but were not paid overtime compensation for the
12 hours over 40 per workweek worked. As such, Defendant violated Labor Code Section 204(b)(1) by
13 failing to pay him for all the overtime wages that they earned which were in excess of the normal work
14 period, by the next payday which followed the overtime work. Labor Code Section 204 does not provide
15 for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies
16 to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and
17 \$200 for each aggrieved employee per pay period for each subsequent violation.

18 **§ 1198**

19 93. California Labor Code section 1198 provides that the maximum hours of work and the
20 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
21 standard conditions of labor for employees. California Labor Code section 1173 defines commission as
22 the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or
23 under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

24 94. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-
25 2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-
26 2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more
27 than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and
28 one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the

workweek.” Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period.

95. As set forth above, on numerous occasions, Plaintiff and his co-workers, aggrieved employees, worked more than eight hours per workday and more than 40 hours per workweek and were not compensated for those overtime hours worked more than eight per day and 40 per week.

96. Sections 4(B) of relevant IWC orders, such as No. 15-2001, provide that “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

97. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

98. As set forth above, on numerous occasions, Defendant did not permit Plaintiff and other aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks.

99. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 15-2001 section 11, provide that “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an —on duty meal period and counted as time worked. An —on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

100. As set forth above, on numerous occasions, Defendant did not permit Plaintiff and other aggrieved employees to have uninterrupted duty-free meal breaks with the opportunity to be relieved of all duties for meal breaks.

101. Based on the foregoing, Defendant violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

102. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty 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.

§ 226(a)

103. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if 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, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (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.” Lab. Code § 226(a).

104. Due to Defendant’s failure to provide meal and rest breaks relieved of all duty, and failure to account for the time worked while receiving and responding to phone calls and text messages while off the clock, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1) the accurate total hours worked by Plaintiff; (2) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Plaintiff; (3) the accurate gross wages earned by Plaintiff; and (4) the accurate net wages earned by Plaintiff. As such, Defendant violated Labor

1 Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement records of the
2 foregoing.

3 105. Labor Code Section 226 does not provide for its own self-contained “civil” penalty within
4 the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each
5 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay
6 period for each subsequent violation.

7 *§ 1174(d)*

8
9 106. Labor Code Section 1174(d) provides that every person employing labor in this state shall
10 keep payroll records showing the hours worked daily by and the wages paid to employees employed for
11 not less than three years. "Person" means any person, association, organization, partnership, business
12 trust, limited liability company, or corporation. Lab. Code § 18.

13 107. Defendant failed to maintain records showing the actual and accurate hours worked by
14 Plaintiff’s co-workers, aggrieved employees, in violation of Labor Code Section 1174. Labor Code
15 Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor
16 Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay
17 period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent
18 violation.

19 *§ 558*

20 108. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of
21 an employer who violates, or causes to be violated, [Labor Code sections 510 and 512] or any provision
22 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to
23 a civil penalty in a PAGA action as follows:

24 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
25 period for which the employee was underpaid . . .

26 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
27 each pay period for which the employee was underpaid . . .
28

109. As discussed above, Defendant violated Labor Code sections 510, 512, and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendant is subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations.

§ 210

110. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

111. As discussed above, Defendants violated Labor Code § 204. As such, Defendant is subject to pay a pre-determined amount of civil penalties for the initial and subsequent violations “plus 25 percent of the amount unlawfully withheld,” as indivisible civil penalties pursuant to Section 210(a).

§ 226.3

112. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for *all* violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

§ 1174.5

113. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor

Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by Plaintiff and the aggrieved employees. Thus, Defendant is subject to civil penalties.

§ 1197.1

114. Pursuant to Labor Code section 1197.1(a), any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

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

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

115. As discussed above, Defendant caused employees to be paid a wage less than the minimum fixed by an applicable state or local law, or by an order of the IWC. As such, Defendant is subject to civil penalties.

Exhaustion of Administrative Remedies

116. On October 27, 2020, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-810816-20. The notice was sent by certified mail on or about October 27, 2020, to MOUNTAIN VIEW (7020 1810 0000 6217 7558; 7020 1810 0000 6217 7565). Plaintiff submitted a \$75.00 fee to the LWDA.

117. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For a \$750 statutory penalty pursuant to Labor Code section 226.
3. For compensatory special damages, in an amount according to proof at the time of trial.
4. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
5. For liquidated damages pursuant to the Fair Labor Standards Act and California Labor Code.
6. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.
7. For costs of suit including expert witness fees.
8. For prejudgment interest.
9. For such other and further relief as the Court may deem proper.

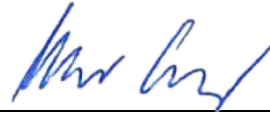
DEMAND FOR JURY TRIAL

Plaintiff ANTHONY QUINTEROS hereby demands a trial by jury.

1 Dated: December 31, 2020

GUTIERREZ DERHAM LAW FIRM LLP

2
3 By:



4 Matthew Gutierrez
5 Attorneys for Plaintiff, ANTHONY
6 QUINTEROS, individually and as a proxy for
7 the State of California
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