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Attorneys for Plaintiff Leonardo Gonzalez,
individually and on behalf of all other
similarly situated current and former
employees of DEFENDANTS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LEONARDO GONZALEZ, individually, and on
behalf of all other similarly situated current and
former employees of DEFENDANTS,

Plaintiff,

vs.

SWEETWATER CAR WASH, INC., a
California corporation; PETER STAAB, an
individual; and DOES 1 through 50, inclusive,

DEFENDANTS.

CASE NO.: 37-2021-00020303-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. Failure to provide meal periods [Cal. Lab. Code §§ 226.7, 512 & 558.1; IWC Wage Order 9-2001(11)];
2. Failure to provide rest breaks [Cal. Lab. Code §§ 226.7 & 558.1; IWC Wage Order No. 9-2001(12)];
3. Failure to pay minimum and straight time wages [Cal. Lab. Code §§ 204, 558.1 & 1194; IWC Wage Order No. 9-2001(4)];
4. Failure to pay overtime wages) [Cal. Lab. Code §§ 510, 558.1, 1194 & 1198; IWC Wage Order No. 9-2001(3)];
5. Failure to Timely Pay All Wages Due to Discharged or Terminated Employees) [Cal. Lab. Code §§ 201 – 204 & 558.1];
6. Failure to Provide Accurate Statements and Maintain Required Records) [Cal. Lab. Code §§ 226 & 558.1; IWC Wage Order No. 9-2001(7)]; and
7. Unfair Business Practices [Cal. Lab. Code § 558.1; Cal. Bus. & Prof. Code §§ 17200, *et seq.*].

DEMAND FOR JURY TRIAL

Plaintiff Leonardo Gonzalez (“Plaintiff”), on behalf of himself and all other similarly situated current and former employees of SWEETWATER CAR WASH, INC., a California corporation (“SWEETWATER”), and PETER STAAB, an individual (“STAAB”), complains and alleges as follows:

INTRODUCTION & GENERAL ALLEGATIONS

1. Plaintiff brings this action against SWEETWATER, STAAB and DOES 1 through 50 (hereinafter collectively referred to as “DEFENDANTS”) for California Labor Code (“Labor Code”) violations stemming from DEFENDANTS’ failure to provide meal periods, failure to provide all net, ten-minute rest periods, failure to pay for all hours worked, including minimum, straight time and overtime wages, failure to timely pay all wages to terminated employees, and failure to furnish accurate itemized wage statements and maintain required records, in accordance with Labor Code sections 201-204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.1, 1197, and Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001.

2. Plaintiff brings the First through Seventh Causes of Action individually and as a class action on behalf of himself and certain current and former employees of DEFENDANTS (hereinafter collectively referred to as the “Class,” and defined more fully below).

3. Plaintiff and the Class are current and former non-exempt employees of DEFENDANTS, for a period of time within the four (4) years preceding the filing of this action.

4. Plaintiff is a resident of California. At all relevant times herein, Plaintiff was employed by DEFENDANTS in the State of California, as a non-exempt, hourly employee.

5. Throughout the time period involved in this case, DEFENDANTS have wrongfully failed to provide Plaintiff and the Class with timely, adequate, and duty-free meal periods. DEFENDANTS regularly required Plaintiff and the Class to work in excess of five (5) consecutive hours a day without providing a thirty-minute, continuous and uninterrupted, meal period for every five (5) hours of work, and failed to compensate Plaintiff and the Class for meal periods that were not provided by the end of the fifth hour or tenth hour of work. DEFENDANTS did not inform Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work. DEFENDANTS did not inform Plaintiff and the Class of their

right to take a second meal break, for shifts longer than ten (10) hours, by the end of the 10th hour. Moreover, DEFENDANTS did not have legally compliant policies or practices providing adequate and duty-free meal periods for Plaintiff and the Class, nor did DEFENDANTS have legally compliant policies or practices regarding the timing of meal periods. DEFENDANTS also did not have any policies or practices to record whether the Plaintiff and the Class were taking their required meal periods as required by IWC Wage Order No. 9-2001(7). Indeed, DEFENDANTS had a policy and practice of understaffing its locations thereby causing their employees to take short or late meal breaks or to miss required meal breaks altogether. Moreover, Plaintiff and members of the Class were rarely fully-relieved of their duties to take meal breaks.

6. Throughout the time period involved in this case, DEFENDANTS have wrongfully failed to authorize and permit Plaintiff and the Class to take timely and duty-free rest periods. DEFENDANTS regularly required Plaintiff and the Class to work in excess of four (4) consecutive hours a day without DEFENDANTS authorizing and permitting them to take a ten-minute, continuous and uninterrupted, rest period for every four (4) hours of work (or major fraction thereof), or without compensating Plaintiff and the Class for rest periods that were not authorized or permitted. DEFENDANTS did not properly inform Plaintiff and the Class of their right to take a rest period every four (4) hours of work (or major fraction thereof). Moreover, DEFENDANTS did not have legally compliant policies or practices permitting or authorizing timely rest periods for Plaintiff and the Class. DEFENDANTS also did not have any policies or practices to verify whether Plaintiff and the Class were receiving their required rest periods.

7. Throughout the time period involved in this case, DEFENDANTS maintained a policy and practice of requiring Plaintiff and the Class to perform work “off-the-clock” that was not compensated. This “off-the-clock” work regularly occurred, among other things, as a result of DEFENDANTS unlawful rounding policies and practices. Moreover, DEFENDANTS did not maintain a formal timekeeping system to enable employees to clock-in and clock-out of shifts and for mandatory meal and rest breaks. DEFENDANTS, rather, engaged in timekeeping by having employees report their hours worked to members of management who in turn manually

recorded their time resulting in “short” hours or a failure to record hours worked altogether. DEFENDANTS did not pay Plaintiff and the Class for this work time, and some of this time should have been paid at the overtime and double time rate.

8. DEFENDANTS willfully failed and refused to timely pay Plaintiff and the Class at the conclusion of their employment for the conduct mentioned above with respect to meal periods, rest periods, and “off-the-clock” work. As a result, DEFENDANTS violated Labor Code sections 201-203. DEFENDANTS’ also regularly and illegally deprived their employees of tips through a regular practice of denying participation in a manager-maintained tip pool. In the most egregious cases, management would collect the tips of Plaintiff and members of the Class for their own benefit and account.

9. DEFENDANTS, as a matter of practice and policy, did not furnish Plaintiff and the Class with accurate itemized wage statements that accurately showed total hours worked by Plaintiff and the Class, gross wages earned, net wages earned, and other information required by Labor Code section 226(a). DEFENDANTS also failed to record meal periods as required by IWC Wage Order No. 9-2001 (7). DEFENDANTS knowingly and intentionally failed to do so because, among other things, the wages statements did not accurately state the total hours worked, the overtime rates, the gross wages earned, and the net wages earned. As a result of these violations of Section 226(a), the Plaintiff and the Class suffered injury because, among other things: (a) the violations led them to believe that they were not entitled to be paid daily minimum wages, overtime wages, meal period premium wages, and rest period premium wages, even though they were entitled; (b) the violations led them to believe that they had been paid the minimum, overtime, meal period premium, and rest period premium wages to which they were entitled, even though they had not been; (c) the violations led them to believe they were not entitled to be paid minimum, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were; (d) the violations led them to believe they had been paid minimum, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been; (e) the violations hindered them from determining the amounts of minimum, overtime, meal period premium, and rest period premium

wages owed to them; (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information; (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits; (h) the wage statements inaccurately understated the wages, hours, and wages rates to which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less than the wages and wage rates to which they were entitled. Thus, Plaintiff and the Class are owed the amounts provided for in Labor Code section 226(e).

THE PARTIES TO EACH CAUSE OF ACTION

A. Plaintiff

10. Plaintiff resides in the State of California. Plaintiff was employed as a car wash attendant by SWEETWATER as an hourly-paid, non-exempt employee at SWEETWATER's 8688 Jamacha Boulevard, Spring Valley, California 91977 location from approximately 2005 to November 17, 2019. STAAB is the President of SWEETWATER.

11. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

12. Plaintiff is informed and believes and, based upon that information and belief, alleges that SWEETWATER is, and has at all times relevant to this action been, a corporation authorized to conduct business, and actually conducting business, in the State of California, and registered in the County of San Diego.

13. Plaintiff is informed and believes, and based upon that information and belief, alleges that STAAB currently serves, and has at all times relevant to this action served, as President of SWEETWATER.

1 14. Plaintiff does not know the true names or capacities of the persons or entities sued
2 herein as DOES 1-50, inclusive, and therefore sues said DEFENDANTS by such fictitious
3 names. Each of DOES 1-50 was in some manner legally responsible for the damages suffered by
4 Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true
5 names and capacities of these DEFENDANTS when they have been ascertained, together with
6 appropriate charging allegations, as may be necessary.

7 15. At all times mentioned herein, the DEFENDANTS named as DOES 1-50, inclusive,
8 and each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
9 and/or injured the Plaintiff and a significant number of Class members in the State of California.

10 16. Plaintiff is informed and believes and thereon alleges that at all relevant times each
11 DEFENDANT, directly or indirectly, or through agents or other persons, employed Plaintiff and
12 the other employees described in the Class definition below, and exercised control over their
13 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
14 that, at all relevant times, each DEFENDANT was the principal, agent, partner, joint venturer,
15 officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in
16 interest and/or predecessor in interest of some or all of the other DEFENDANTS, and was
17 engaged with some or all of the other DEFENDANTS in a joint enterprise for profit, and bore
18 such other relationships to some or all of the other DEFENDANTS so as to be liable for their
19 conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon
20 alleges that each DEFENDANT acted pursuant to and within the scope of the relationships
21 alleged above, that each DEFENDANT knew or should have known about, and authorized,
22 ratified, adopted, approved, controlled, aided and abetted the conduct of all other
23 DEFENDANTS.

24 17. SWEETWATER, STAAB and DOES 1-50 are collectively referred to herein as
25 “DEFENDANTS.”

26 18. Section 558.1(a) of the Labor Code provides that “[a]ny employer or other person
27 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
28 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.” Further, Labor Code section 558.1 (b) states that “[f]or purposes of this section, the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer. . .” DEFENDANTS are the joint employers or other persons acting on behalf of an employer who violated, or caused to be violated the relevant sections of the Labor Code.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action individually, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure (“CCCP”) section 382.

20. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

21. The proposed Class consists of and is defined as:

“All persons employed by DEFENDANTS to work in any non-exempt, hourly-paid job position in California at any time during the period beginning four (4) years before the filing of the initial complaint in this action and ending when notice to the Class is sent.”

22. Plaintiff reserves the right to establish other sub-classes as appropriate.

23. At all material times, Plaintiff was a member of the Class.

24. Plaintiff undertakes this action for the benefit of all Class members.

25. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time, however, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of DEFENDANTS’ records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect

the interests of each Class member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class member. Plaintiff's attorneys, the proposed class counsel, are well-versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action will continue to incur, costs and attorney's fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class member.

(d) Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws with regularity. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their

former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

26. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, DEFENDANTS have:

- (a) Failed to provide meal periods and pay meal period premium wages to Class members;
- (b) Failed to authorize and permit rest periods and pay rest period premium wages to Class members;
- (c) Failed to pay Class members for all hours worked, including minimum, straight time, and overtime wages;
- (d) Failed to promptly pay all wages due to Class members upon their discharge or resignation;
- (e) Failed to provide Class members with accurate wage statements;

27. This Court should permit this action to be maintained as a class action pursuant to CCCP section 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;
- (d) Plaintiff and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations and in obtaining adequate compensation for the damages and injuries for which DEFENDANTS are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the Class would create a risk of:
 - 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for DEFENDANTS; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible DEFENDANTS; and,
- (g) DEFENDANTS have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

28. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The DEFENDANTS' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

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FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

[Cal. Lab. Code §§ 226.7, 512 and 558.1; IWC Wage Order No. 9-2001(11)]

29. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

30. Under California law, DEFENDANTS have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than fifth hour of work in a workday, and to take their second meal periods no later than the tenth hour of work in the workday.

31. Despite these legal requirements, DEFENDANTS regularly failed to provide Plaintiff and the Class with both meal periods as required by California law.

32. Under California law, Plaintiff and the Class are entitled to be paid one (1) hour of additional wages for each instance he or she was not provided with all required meal period(s).

33. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional wages to which they were entitled for meal periods and that were not provided.

34. As a result, DEFENDANTS are liable to Plaintiff and the Class for one (1) hour of additional wages for each work day for a meal period that was not provided.

35. By failing to keep adequate time records required by Labor Code section 1174(d), DEFENDANTS have made it difficult to calculate the full extent of meal period premium wage compensation due to Plaintiff and the Class members.

36. Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including meal period premium wages for each meal period that was not provided. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a month.

37. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties provided for in Labor Code section 558 because of the violations alleged in this cause of action.

SECOND CAUSE OF ACTION

(Against All Defendants for Failure to Provide Rest Periods)

[Cal. Lab. Code § 226.7 and 558.1; IWC Wage Order No. 9-2001(12)]

38. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

39. DEFENDANTS are required by California law to authorize and permit breaks of an uninterrupted, net ten-minutes for each four (4) hours of work or major fraction of four (4) hours (i.e., more than two (2) hours). That is, the required number of rest breaks is equal to the number of work hours divided by four (4), and if the work time is not evenly divided by four (4), if the remaining fractional part is two (2) hours or less it is rounded down, and if it is more than two (2) hours, it is rounded up. Thus, for example, if an employee's work time is six (6) hours and ten (10) minutes, the employee is entitled to two (2) rest breaks. If the work time is nine (9) hours, the employee is still entitled to only two (2) rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

40. Despite these legal requirements, DEFENDANTS failed to authorize Plaintiff and the Class to take all timely, net, ten-minute rest breaks owed to them, regardless of whether employees worked more than four (4) hours in a workday.

41. Under California law, Plaintiff and the Class are entitled to be paid one (1) hour of premium wages for each instance in which he or she was not provided with all required rest breaks.

42. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional wages to which they were entitled for rest breaks that DEFENDANTS failed authorize and permit. As a result, DEFENDANTS are liable to Plaintiff and the Class for one (1) hour of additional wages for each work day when they did not receive a rest break.

43. Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including rest break premium wages for each rest break that was not authorized and permitted.

However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a month.

44. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties provided for in Labor Code section 558 because of the violations alleged in this cause of action.

THIRD CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum and Straight Time Wages)

[Cal. Lab. Code §§ 204 , 558.1 and 1194; IWC Wage Order No. 9-2001(4)]

45. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

46. At all relevant times herein mentioned, DEFENDANTS knowingly failed to pay to Plaintiff and the other members of the Class compensation for all hours they worked. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

47. At all relevant times herein mentioned, DEFENDANTS knowingly failed to pay to Plaintiff and the other members of the Class compensation for all hours that they worked.

48. Accordingly, Plaintiff and the other members of the Class are entitled to recover straight time wages for all non-overtime hours worked for DEFENDANTS.

49. By and through the conduct described above, Plaintiff and the other members of the Class, have been deprived of their rights to be paid wages earned by virtue of their employment with DEFENDANTS.

50. Due to DEFENDANTS’ unlawful failure to pay additional compensation to the Class for their non-overtime hours worked without pay, the Class has suffered, and will continue to suffer, damages in amounts which are presently unknown to the Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.

51. By failing to keep adequate time records required by Labor Code section 1174(d), DEFENDANTS have made it difficult to calculate the full extent of compensation due Plaintiff

and the Class members.

52. Pursuant to Labor Code section 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (i.e., double damages) for DEFENDANTS' failure to pay minimum wages.

53. Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class members were entitled to be paid twice a month at rates required by law, including minimum wages and straight time wages. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class members all such wages due, and failed to pay those wages twice a month.

54. Plaintiff and the Class are also entitled to seek recovery of all unpaid wages, interest, and reasonable attorney's fees and costs pursuant to Labor Code sections 218.5 and 218.6.

55. DEFENDANTS are also liable to the Class for the civil penalties provided for in Labor Code section 558, because of the violations alleged in this cause of action.

FOURTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

[Cal. Lab. Code §§ 510, 558.1, 1194 & 1198; IWC Wage Order No. 9-2001 (3)]

56. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

57. Labor Code section 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

58. Moreover, Labor Code sections 1194 and 1198 provide that employees in California shall not be employed more than eight (8) hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code section 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

59. At all times relevant hereto, Plaintiff and the members of the Class have worked more

than eight (8) and, at times, more than twelve (12) hours in a workday as employees of DEFENDANTS. Further, at all times relevant hereto, Plaintiff and members of the Class have been paid on an hourly basis.

60. At all times relevant hereto, DEFENDANTS failed to pay Plaintiff and other members of the Class overtime compensation for the hours that they worked in excess of the maximum hours permissible by law as required by Labor Code sections 510 and 1198 by, among other things, failing to properly staff its locations to enable employees to take compliant meal and rest breaks. Due to such conduct and other staffing practices of DEFENDANTS, Plaintiff and the other members of the Class are regularly required to work overtime hours. By virtue of DEFENDANTS' unlawful failure to pay additional, premium rate compensation to the Plaintiff and the other members of the Class for their overtime hours worked, the Plaintiff and the other members of the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

61. By failing to keep adequate time records required by Labor Code section 1174(d), DEFENDANTS have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class members.

62. Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class members were entitled to be paid twice a month at rates required by law, including overtime wages. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class members all such wages due, and failed to pay those wages twice a month.

63. Plaintiff and the other members of the Class also request recovery of overtime compensation according to proof, interest, attorney's fees and costs pursuant to Labor Code sections 218.5 and 1194(a), as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the Labor Code and/or other statutes. Further, Plaintiff and the other members of the Class are entitled to seek and recover reasonable attorney's fees

and costs pursuant to Labor Code sections 218.5 and 1194.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Timely Pay All Wages Due to Discharged or Terminated Employees)

[Cal. Lab. Code §§ 201 – 204 & 558.1]

64. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

65. At all times herein set forth, Labor Code sections 201 and 202 provided that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

66. Within the applicable statute of limitations, the employment of Plaintiff and many other members of the Class ended (i.e., was terminated by quitting or discharge) and the employment of others will be. However, during the relevant time period, DEFENDANTS failed, and continue to fail, to pay Plaintiff and terminated Class members, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ.

67. DEFENDANTS' failure to pay Plaintiff and those Class members who are no longer employed by DEFENDANTS their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ, is in violation of Labor Code sections 201 and 202.

68. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

49. Plaintiff and Class members are entitled to recover from DEFENDANTS their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code section 203.

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide Accurate Statements and Maintain Required Records)

[Cal. Lab. Code §§ 226 & 558.1; IWC Wage Order No. 9-2001(7)]

69. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

70. At all material times set forth herein, Labor Code section 226(a) provides that every employer shall furnish each of their employees an accurate itemized wage statement in writing showing nine (9) pieces of information, including: (1) gross wages earned; (2) total hours worked by the employee; (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 the last four (4) 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.

71. DEFENDANTS have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the members of the Class, the failure to list the true "total hours worked by the employee," the failure to list the true net wages earned, and the failure to list the name and address of the legal entity(s) that employ Plaintiff and members of the Class.

72. As a result of DEFENDANTS' violation of Labor Code section 226(a), Plaintiff and

members of the Class have suffered injury and damage to their statutorily-protected rights.

73. Specifically, Plaintiff and the members of the Class have been injured by DEFENDANTS' intentional violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under Labor Code section 226(a).

74. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff was also injured as a result of having to bring this action to attempt to obtain correct wage information following DEFENDANTS' refusal to comply with many of the mandates of the Labor Code and related laws and regulations.

75. Plaintiff and the Class members are entitled to recover from DEFENDANTS the greater of their actual damages caused by DEFENDANTS' failure to comply with Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4000.00) per employee.

76. Plaintiff and the members of the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to Labor Code section 226(g).

SEVENTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business &

Professions Code §§ 17200, et seq.)

[Cal. Lab Code § 558.1; Cal. Bus. & Prof. Code §§17200, et seq.]

77. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations and Causes of Action set out in this Complaint.

78. DEFENDANTS, and each of them, are "persons" as defined under California Business & Professions Code section 17201.

79. DEFENDANTS' conduct as alleged herein has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, the Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of CCCP section

1021.5.

80. DEFENDANTS' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code ("Business & Professions Code") sections 17200, *et seq.*

81. A violation of Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the Labor Code, are unlawful and in violation of public policy. In addition, such acts are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of Business & Professions Code sections 17200, *et seq.*

Failing to Provide Meal Periods

82. DEFENDANTS' failure to provide meal periods in accordance with Labor Code sections 226.7 and 512, and the IWC Wage Order(s), as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code sections 17200, *et seq.*

Failing to Authorize and Permit Rest Periods

83. DEFENDANTS' failure to authorize and permit rest periods in accordance with Labor Code section 226.7 and the IWC Wage Order(s), as alleged above, constitutes unlawful and/or unfair activity prohibited by Business & Professions Code sections 17200, *et seq.*

Failing to Pay Minimum and Straight Time Wages

84. DEFENDANTS' failure to pay minimum and straight time wages constitutes unlawful and/or unfair activity prohibited by Business & Professions Code sections 17200, *et seq.*

Failing to Pay Overtime

85. DEFENDANTS' failure to pay overtime compensation and other benefits in violation of Labor Code sections 510, 1197 and 1198 and California Penal Code sections 484 and 532 (i.e., obtaining labor through false pretenses), constitutes unlawful and/or unfair activity prohibited by Business & Professions Code sections 17200, *et seq.*

Failing to Provide Accurate Statements and Maintain Required Records

86. DEFENDANTS' failure to provide accurate itemized wage statements in accordance

with Labor Code section 226, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business & Professions Code sections 17200, *et seq.*

87. By and through their unfair, unlawful and/or fraudulent business practices described herein, the DEFENDANTS have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

88. Plaintiff and the other Class members suffered monetary injury as a direct result of DEFENDANTS' wrongful conduct.

89. Plaintiff is, individually, and on behalf of members of the putative Class, entitled to and does seek such relief as may be necessary to disgorge money and/or property which the DEFENDANTS have wrongfully acquired, or of which Plaintiff has been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the members of the putative Class are not obligated to establish individual knowledge of the wrongful practices of DEFENDANTS in order to recover restitution.

90. Plaintiff, individually, and on behalf of members of the putative Class, is further entitled to and does seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the DEFENDANTS, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

91. Plaintiff, individually, and on behalf of members of the putative Class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class members suffered as a consequence of the DEFENDANTS' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable harm unless the DEFENDANTS, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

92. Plaintiff also alleges that, if DEFENDANTS are not enjoined from the conduct set forth hereinabove, they will continue to avoid paying the appropriate taxes, insurance and other

withholdings.

93. Pursuant to Business & Professions Code sections 17200, *et seq.*, Plaintiff and the putative Class members are entitled to restitution of the wages withheld and retained by DEFENDANTS during a period that commences four (4) years prior to the filing of this complaint; a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to Plaintiff and the Class members; an award of attorney's fees pursuant to CCCP section 1021.5 and other applicable laws; and an award of costs.

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated, pray for relief and judgment against DEFENDANTS, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code sections 226.7 and 512 and the IWC Wage Order(s) and are liable under Labor Code section 558.1;

5. For general unpaid wages and such general and special damages as may be appropriate;

6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

7. For reasonable attorney's fees and for costs of suit incurred herein; and

8. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

9. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code section 226.7 and the IWC Wage Order(s) and are liable under Labor Code section 558.1;

10. For general unpaid wages and such general and special damages as may be appropriate;

11. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

12. For reasonable attorney's fees and for costs of suit incurred herein; and

13. For such other and further relief as the Court may deem equitable and appropriate

As to the Third Cause of Action

14. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code sections 204 and 1194 and the IWC Wage Order(s) and are liable under Labor Code section 558.1;

15. For general unpaid wages and such general and special damages as may be appropriate;

16. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

17. For liquidated damages;

18. For reasonable attorney's fees and for costs of suit incurred herein; and

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code sections 510 and 1198 and applicable IWC Wage Order(s) and are liable under Labor Code section 558.1 by willfully failing to pay all overtime wages due to Plaintiff and Class members;

21. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

22. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

23. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code section 1194(a); and,

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code sections 201 through 204 and the IWC Wage Order(s) and are liable under Labor Code section 558.1 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other terminated Class members;

26. For all actual, consequential and incidental losses and damages, according to proof;

27. For statutory wage penalties pursuant to Labor Code section 203 for Plaintiff and all other class members who have left DEFENDANTS' employ;

28. For pre-judgment interest on any unpaid wages from the date such amounts were due;

29. For reasonable attorney's fees and for costs of suit incurred herein; and

30. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

31. That the Court declare, adjudge and decree that DEFENDANTS violated the recordkeeping provisions of Labor Code section 226(a) and applicable IWC Wage Order(s) and are liable under Labor Code section 558.1 as to Plaintiff and the Class members, and willfully failed to provide accurate itemized wage statements thereto;

32. For all actual, consequential and incidental losses and damages, according to proof;

33. For statutory penalties pursuant to Labor Code section 226(e);

34. For injunctive relief to ensure compliance with this section, pursuant to Labor Code section 226(g);

35. For reasonable attorney's fees and for costs of suit incurred herein; and

36. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

37. That the Court declare, adjudge and decree that DEFENDANTS violated Business & Professions Code sections 17200, *et seq.* and are liable under Labor Code section 558.1 by

failing to provide Plaintiff and Class members with meal periods, failing to authorize and permit required rest periods, failing to provide all compensation due to them, failing to provide accurate itemized wage statements, and failing to pay Plaintiff's and Class members' wages in a timely manner as required by Labor Code sections 201, 202 and 203;

38. For restitution of unpaid wages to Plaintiff and all Class members and prejudgment interest from the day such amounts were due and payable;

39. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of Business & Professions Code sections 17200, *et seq.*;

40. For reasonable attorney's fees and costs of suit incurred herein pursuant to CCCP section 1021.5;

41. For injunctive relief to ensure compliance with this section, pursuant to Business & Professions Code sections 17200, *et seq.*; and,

42. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

43. For any additional relief that the Court deems just and proper.

Dated: May 5, 2021

Respectfully submitted,

RASTEGAR LAW GROUP, APC

By: 

Farzad Rastegar
Danielle Sherrod
Attorneys for Plaintiff Leonardo Gonzalez,
individually, and all other similarly situated
employees of DEFENDANTS

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Dated: May 5, 2021

RASTEGAR LAW GROUP, APC

By: 
Farzad Rastegar
Danielle Sherrod
Attorneys for Plaintiff Leonardo Gonzalez,
individually, and all other similarly situated
employees of DEFENDANTS