

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda Law Corp.
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff JUAN RUIZ
10 on behalf of himself and similarly situated employees

FILED/ENDORSED

MAR 29 2021

By: N. Zeyaad
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JUAN RUIZ, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

CTE CAL, INC., a California Corporation; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00289168

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff JUAN RUIZ ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this Complaint against Defendants CTE CAL, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

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1 **PARTIES**

2 5. JUAN RUIZ is an individual over the age of eighteen (18) and is a resident of the
3 State of California.

4 6. On information and belief, Plaintiff alleges, CTE CAL, INC., is now and/or at all
5 times mentioned in this Complaint was a California Corporation and the owner and operator of an
6 industry, business and/or facility doing business in the State of California.

7 7. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the
8 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
9 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
10 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
11 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
12 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
13 Plaintiff.

14 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
15 other Defendants and was acting within the course and scope of such agency or employment. The
16 Defendants are jointly and severally liable to Plaintiff.

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

21 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
22 approved, ratified, acquiesced, aided, or abetted the acts and omissions alleged in this Complaint.

23 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
24 wrongs, complaints, injuries and/or damages alleged in this Complaint.

25 **CLASS ALLEGATIONS**

26 12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
27 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
28 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

1 All individuals who have, or continue to, perform work for Defendants in
2 California as hourly, non-exempt employees from four (4) years prior to
the filing of this Complaint to the present.

3 13. This action has been brought and may be properly maintained as a class action,
4 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
5 defined community of interests in the litigation and the proposed class is easily ascertainable.

6 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
7 is impracticable under the circumstances of this case. While the exact number of class
8 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
9 Defendants have employed as many as fifty (50) individuals falling within the above
10 stated class definition throughout the State of California during the applicable statute of
11 limitations, who were subjected to the policies and practices outlined in this Complaint.
12 As such, joinder of all members of the putative class is not practicable.

13 (b) Common Questions Predominate: Common questions of law and fact exist as to all
14 members of the putative class and predominate over questions that affect only individual
15 members of the class. These common questions of law and fact include, without
16 limitation, the following:

- 17 (1) Whether Defendants paid Plaintiff and putative class members for all hours
18 worked;
19 (2) Whether Defendants paid Plaintiff and putative class members all overtime wages
20 they were owed;
21 (3) Whether Defendants had a policy or practice of failing to take into account
22 different rates of pay paid to Plaintiff and putative class members, including rates
23 paid for drive time and prevailing wages, to calculate their regular rates of pay;
24 (4) Whether Defendants failed to authorize and permit Plaintiff and putative class
25 members to take meal periods;
26 (5) Whether Defendants failed to authorize and permit Plaintiff and putative class
27 members to take rest periods;

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- 1 (6) Whether Defendants failed to authorize and permit second meal periods and third
2 rest periods when Plaintiff and putative class members worked over 10 hours in a
3 day;
4 (7) Whether Defendants failed to authorize and permit Plaintiff and putative class
5 members to begin meal periods before the end of their fifth hour of work;
6 (8) Whether Defendants had a policy and practice requiring Plaintiff and putative
7 class members to remain on the work premises during the meal and rest periods;
8 (9) Whether as a result of Defendants' policies and practices Plaintiff's and putative
9 class members received all wages, due and owing, at the time of their termination
10 or separation; and
11 (10) Whether Defendants provided Plaintiff's and putative class members with wage
12 statements that complied with Labor Code section 226.

13 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
14 class. The putative class also sustained damages arising out of Defendants' common
15 course of conduct in violation of the law as complained of herein. Plaintiff and all
16 members of the putative class were non-exempt employees who were not paid for all
17 hours worked and all overtime wages earned, did not receive all meal and rest periods,
18 and were not reimbursed for the use of their personal cellphones. Additionally,
19 Defendants issued Plaintiff and all members of the putative class wage statements that
20 did not comply with Labor Code section 226 and failed to timely pay them their final
21 wages. As a result, Plaintiff and each member of the putative class will have suffered the
22 same type of harm and seek the same type of recovery based on the same legal theories.

23 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
24 putative class. For all relevant times, Plaintiff resided in California and worked for
25 Defendants in California. Moreover, Plaintiff is an adequate representative of the
26 putative class as Plaintiff has no interests that are adverse to those of putative class
27 members. Additionally, Plaintiff has retained counsel who has substantial experience in
28 complex civil litigation and wage and hour matters.

1 (e) Superiority: A class action is superior to other available means for the fair and efficient
2 adjudication of the controversy since individual joinder of all members of the putative
3 class is impracticable. Class action treatment will permit a larger number of similarly
4 situated persons to prosecute their common claims in a single forum simultaneously,
5 efficiently, and without the unnecessary duplication of effort and expense that numerous
6 individual actions would engender. Further, as damages suffered by each individual
7 member of the class may be relatively small, the expenses and burden of the individual
8 litigation would make it difficult or impossible for individual members of the class to
9 redress the wrongs done to them, and an important public interest will be served by
10 addressing the matter as a class action. The cost to the court system of adjudication of
11 such individualized litigation would be substantial. Individualized litigation would also
12 present the potential for inconsistent or contradictory judgments.

13 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 **GENERAL ALLEGATIONS**

16 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
17 set forth herein.

18 16. Plaintiff worked for Defendants from approximately June 1, 2017 to September 18, 2020
19 as an hourly, non-exempt employee. Defendants failed to pay Plaintiff and similarly situated employees
20 for all hours spent driving for work purposes, including time from Defendants' lab/office location to the
21 first job site. Plaintiff and similarly situated employees had to obtain materials and equipment necessary
22 to complete their job tasks from Defendants' lab/office location and transport that to various worksites.
23 Defendants only paid for this drive time when certain, limited types of equipment or materials were
24 being transported instead of whenever Plaintiff and similarly situated employees had to travel to the
25 lab/office for transporting materials and equipment. Due to the nature of Plaintiff's and similarly
26 situated employees work, they were unable to obtain the materials by any other means than going to the
27 lab/office location and transporting them to the worksite.

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1 17. Defendants utilized a compensation policy that paid Plaintiff and similarly situated
2 employees an hourly rate for driving in excess of one (1) hour to the first job site and one (1) hour back
3 from the last job site to home. Defendants did not aggregate the time spent driving into the total hours
4 worked for purposes of calculating overtime hours. Defendants also did not account for the hours or the
5 value of payments made under this policy when calculating the regular rate for purposes of premium
6 wage and/or sick leave wage determinations or the total amount of overtime wages owed. Defendants
7 also utilized a rate of sick leave accrual for hourly employees that was less than 1 hour for every 30
8 hours worked and did not allow employees to begin accruing sick leave based on the amount of hours
9 worked for the first 90 days of employment, which was considered an employee's introductory period.
10 Defendant regularly deducted time beyond the one (1) hour limits set by the drive time policy, causing
11 further unpaid wages and wage statements that did not accurately reflect the hours that Plaintiff and
12 similarly situated employees work.

13 18. Defendants utilized a reimbursement policy that paid Plaintiff and similarly situated
14 employees for mileage at a rate of twenty-two (22) cents per mile for mileage in excess of fifty (50)
15 miles, each way, from the closer of the lab/office or the employees residence to the first job site.
16 However, Plaintiffs were required to pay for gas for their vehicles for all miles driving, and were
17 regularly not reimbursed for all gas payments made as a result of this policy.

18 19. Plaintiff and similarly situated employees worked on prevailing wage jobs as well as non-
19 prevailing wage jobs for Defendants. Sometimes Plaintiff and similarly situated employees would work
20 non-prevailing wage jobs and prevailing wage jobs in the same day and/or the same workweek.
21 Although Defendants paid Plaintiff and similarly situated employees some prevailing wages owed,
22 Defendants failed to pay Plaintiff and similarly situated employees all prevailing wages they were
23 entitled to. There were numerous instances where Defendants only paid Plaintiff and similarly situated
24 employees their non-prevailing wage rates rather than the correct prevailing wage rates even though
25 Plaintiff and similarly situated employees were working on government funded projects and
26 construction worksites. Plaintiff is informed and believes that Defendants were aware that the work
27 performed was subject to prevailing wage law and that Defendants lacked any good faith basis for
28 failing to pay the prevailing wage rates, including overtime based on the prevailing wage rates.

1 20. Plaintiff and similarly situated employees worked over eight (8) hours in a day and/or
2 forty (40) hours in a week on numerous occasions. By failing to account for all hours worked by
3 Plaintiff and similarly situated employees, including drive time, and by failing to account for the value
4 of all payments made when calculating the regular rate of pay, including blending prevailing wage and
5 non-prevailing wage earnings in the same workweek for purposes of calculating the overtime rate of pay
6 on non-prevailing wage work during that same workweek, Defendants also failed to pay Plaintiff and
7 similarly situated employees all overtime wages owed and sick leave wages.

8 21. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
9 a full, uninterrupted thirty (30) minute meal period every five (5) hours and ten (10) minute rest periods
10 every four (4) hours or major fraction thereof. Defendants required Plaintiff and similarly situated
11 employees to remain at the job site, so Plaintiff and similarly situated employees were unable to leave
12 the premises to take a meal or rest period. Additionally, to the extent Plaintiff and similarly situated
13 employees were able to take a meal period, Defendants did not have a policy or practice to relieve
14 Plaintiff and similarly situated employees for a full thirty (30) minutes and did not have any policy or
15 practice for the meal period to begin before the end of Plaintiff's and similarly situated employees' fifth
16 hour of work. Plaintiff and similarly situated employees were regularly deprived of the ability to take a
17 second meal period or third rest period when they work over ten (10) or twelve (12) hours in a day.

18 22. Defendants did not timely pay Plaintiff and similarly situated employees all wages owed
19 to them. Defendants failed to pay Plaintiff and similarly situated employees all wages they earned
20 between the 1st and 15th days of the month between the 16th and the 26th day of the month during
21 which the work was performed, and all wages they earned between the 16th and the last day of the
22 month between the 1st and 10th day of the following month. Defendant's regularly altered Plaintiff and
23 similarly situated employees time records from what was submitted to payroll and deducted otherwise
24 compensable time under Defendants' own policies and California law. The alternations and striking of
25 hours caused Defendants' failure to keep and maintain accurate records of the hours Plaintiff and
26 similarly situated employees worked, including time spent during any meal periods.

27 23. Defendants failed to reimburse Plaintiff and similarly situated employees for all expenses
28 they incurred for work, including the use of their personal cellphones. Defendants required Plaintiff and

1 similarly situated employees to use their personal cellphones for work but failed to have any policy or
2 practice to reimburse them for such use.

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4 24. Defendants failed to provide Plaintiff and similarly situated employees with accurate
5 wage statements. The wage statements did not accurately itemize Plaintiff's and similarly situated
6 employees' total hours worked, all applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate, and the correct amount of gross and net
8 wages.

9 25. At the time of Plaintiff's and similarly situated employees' termination and/or separation,
10 Plaintiff and similarly situated employees had regular and overtime wages owing to them, meal and rest
11 period premiums, and paid sick time. To date, Defendants have not paid Plaintiff and similarly situated
12 employees these unpaid wages.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**
15 **FAILURE TO PAY OVERTIME WAGES**
16 **(As to all Defendants)**

17 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
18 set forth herein.

19 27. During the period Plaintiff was employed by Defendants, Defendants were required to
20 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
21 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
22 hours worked in excess of twelve (12) hours per day. See, e.g., IWC Wage Order No. 16, section
23 (3)(A); Cal. Lab. Code §§ 510, 1194.

24 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
25 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
26 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
27 worked at their regular rate of pay due to Defendants failing to pay Plaintiff and similarly situated
28 employees for all time spent driving and failing to take into account different rates of pay Plaintiff and
similarly situated employees earned when calculating their regular rates of pay.

1 29. Plaintiff and similarly situated employees were not exempt from overtime protections
2 employees under the California Wage Orders and Labor Code.

3 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
5 the extent pertinent as if set forth here in full.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(As to all Defendants)**

9 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
10 set forth herein.

11 32. For the period preceding the filing of this Complaint, Defendants were required to
12 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
13 every hour worked. See MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code §
14 1194.

15 33. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
16 obligation to pay the minimum wage for each hour worked but failed to do so as Defendants failed to
17 pay Plaintiff and similarly situated employees for all time they spent driving.

18 34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
19 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
20 the extent pertinent as if set forth here in full.

21 **THIRD CAUSE OF ACTION**
22 **MEAL PERIOD VIOLATIONS**
23 **(As to all Defendants)**

24 35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully
25 set forth herein.

26 36. An employer must provide an employee a meal period in accordance with the
27 applicable Wage Order, and California Labor Code sections 226.7 and 512.

28 37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section
10(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
minutes for each work period of more than five (5) hours.

1 38. California Labor Code section 512 and Wage Order No. 16 section 10(B) further
2 provide that employers may not employ employees for a work period for more than ten (10) hours
3 per day without providing the employee with a second meal period of at least thirty (30) minutes.
4 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
5 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
6 (1) hour of pay at their regular rate of compensation for each meal period not provided.

7 39. Defendants employed Plaintiff and similarly situated employees for periods of more
8 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
9 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
10 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
11 employees to take their first meal period before the completion of their fifth hour of work and failed
12 to allow Plaintiff and similarly situated employees to take their second meal period before the
13 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
14 rights to all meal periods throughout their employment.

15 40. Defendants further failed to pay Plaintiff and similarly situated employees the
16 applicable meal period premiums for any such missed meal breaks.

17 41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
18 employees have been damaged as stated in the section below entitled "DAMAGES," which is
19 incorporated here to the extent pertinent as if set forth here in full.

20 **FOURTH CAUSE OF ACTION**
21 **REST PERIOD VIOLATIONS**
22 **(As to all Defendants)**

23 42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully
24 set forth herein.

25 43. An employer must provide an employee a rest period in accordance with the
26 applicable Wage Order and California Labor Code section 226.7.

27 44. California Labor Code section 226.7 and Wage Order No. 16, section 11(A) require
28 an employer to provide a rest period of not less than ten (10) minutes for each work period of more
than four (4) hours or a major fraction thereof.

1 45. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
2 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
3 they worked more than four (4) hours or a major fraction thereof.

4 46. Defendants further failed to pay Plaintiff and similarly situated employees the
5 applicable rest period premiums for any such missed rest periods.

6 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
7 employees have been damaged as stated in the section below entitled "DAMAGES," which is
8 incorporated here to the extent pertinent as if set forth here in full.

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10 **FIFTH CAUSE OF ACTION**
 WAGE STATEMENT VIOLATIONS
 (As to all Defendants)

11 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully
12 set forth herein.

13 49. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
14 statement to an employee, semimonthly or at the time of each payment of wages, showing:

15 *(1) gross wages earned, (2) total hours worked by the employee, except for*
16 *any employee whose compensation is solely based on a salary and who is*
17 *exempt from payment of overtime under subdivision (a) of Section 515 or*
18 *any applicable order of the Industrial Welfare Commission, (3) the*
19 *number of piece-rate units earned and any applicable piece rate if the*
20 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
21 *all deductions made on written orders of the employee may be aggregated*
22 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
23 *period for which the employee is paid, (7) the name of the employee and*
24 *the last four digits of his or her social security number or an employee*
25 *identification number other than a social security number, (8) the name*
26 *and address of the legal entity that is the employer and, if the employer is*
27 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
28 *name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be
 recorded in ink or other indelible form, properly dated, showing the
 month, day, and year, and a copy of the statement and the record of the
 deductions shall be kept on file by the employer for at least three years at
 the place of employment or at a central location within the State of
 California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). Defendants did not accurately
2 itemize total hours worked, all applicable hourly rates in effect during the pay period, all regular,
3 overtime and double time hours worked and corresponding rates of pay, and gross and net wages
4 earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees'
5 total hours worked due to Defendants' policy of failing to pay for all drive time. Plaintiff and
6 similarly situated employees were not able to promptly and easily determine their total hours worked
7 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
8 confusion over whether they received all wages owed and were prevented from effectively
9 challenging information on their wage statements.

10 51. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
11 employees have been damaged as stated in the section below entitled "DAMAGES," which is
12 incorporated here to the extent pertinent as if set forth here in full.

13 **SIXTH CAUSE OF ACTION**
14 **WAITING TIME PENALTIES**
15 **(As to all Defendants)**

16 52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully
17 set forth herein.

18 53. An employer must pay an employee who is terminated all unpaid wages immediately
19 upon termination. *See* Cal. Lab. Code § 201.

20 54. An employer must pay an employee who resigns all unpaid wages within seventy-two
21 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

22 55. Plaintiff and similarly situated employees did not receive all wages, including minimum
23 and overtime wages, meal and rest period premiums, and paid sick time owed at their termination or
24 within the required time after their separation from employment.

25 56. An employer who willfully fails to pay an employee wages in accordance with California
26 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
27 days. *See* Cal. Lab. Code § 203.

28 57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
their final wages when their employment terminated. Indeed, Defendants had knowledge of the time

1 Plaintiff and similarly situated employees spent driving but failed to pay them for all of this time.
2 Additionally, Defendants had knowledge that their meal and rest period policies and practices failed to
3 authorize and permit all meal and rest period owed, which resulted in missed meal and rest periods.
4 Defendants also had knowledge that they were paying Plaintiff and similarly situated employees
5 multiple different rates of pay but failed to take them into account for the purpose of calculating
6 Plaintiff's and similarly situated employees' regular rates of pay. Such conduct shows Defendants had
7 knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the
8 remaining wages owed.

9 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
10 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
11 thirty (30) days for Defendants' failure to pay all wages due.

12 **SEVENTH CAUSE OF ACTION**
13 **FAILURE TO REIMBURSE EXPENSES**
14 **(As to all Defendants)**

15 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
16 set forth herein.

17 60. California Labor Code section 2802(a) states that "An employer shall indemnify his or
18 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
19 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
20 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
21 unlawful."

22 61. Defendants required Plaintiff and similarly situated employees to use their personal
23 cellphones for work but failed to reimburse them for such use. Plaintiffs and similarly situated
24 employees were also required to pay for all gas associated with driving the vehicles but only reimbursed
25 for a small fraction of the total use of the vehicles.

26 62. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
27 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
28 the extent pertinent as if set forth here in full.

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EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

65. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, meal and rest period premiums, and paid sick time, during their employment or any time thereafter. Additionally, Defendants failed to pay Plaintiff and similarly situated employees all prevailing wages they were owed. Indeed, Plaintiff and similarly situated employees worked some prevailing wage jobs that Defendants failed to pay them any prevailing wages for, including overtime on prevailing wages.

66. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

67. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 1771, 1774, 1815, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully set forth herein.

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1 69. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
2 following provisions of the Labor Code in their dealings with him and other similarly situated current
3 and former employees:

- 4 a. Violation of Labor Code §§ 510, 1194, 1815; IWC Wage Order 16, § 3 (Failure to
5 Pay Overtime Wages)
6 b. Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay
7 Minimum Wages)
8 c. Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 10(A) and 10(B)
9 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
10 d. Violation of Labor Code § 226.7 and Wage Order No. 16, § 11(A) (Failure to Provide
11 Rest Periods or Pay Premiums in Lieu Thereof)
12 e. Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
13 f. Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
14 g. Violation of Labor Code §§ 226, 226.3, 1776 (Failure to Provide Accurate Wage
15 Statements)
16 h. Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
17 i. Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
18 j. Violation of Labor Code § 1171, 1774 (Failure to Pay Prevailing Wages)
19 k. Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
20 Work in Any Industrial Welfare Commission Order)
21 l. Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

22 70. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no
23 civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

24 71. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
25 2699(a) and 2699.3.

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DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
d. For any other remedies as allowed by law and/or deemed appropriate by the Court;
9. For such other and further relief as this Court may deem just and proper, including, but not limited to:
- a. Wages as proved at trial;
b. Injunctive and Declaratory relief;
c. Attorney's fees and costs as provided for by law; and
d. Interest.

Dated: March 8, 2021

Shimoda Law Corp.

By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

1 Ruiz v. CTE Cal, Inc.

2 Sacramento Superior Court Case No. 34-2020-00289168

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a, and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On March 29, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint For Damages

10 Sean D. Schwerdtfeger, Esq. (SBN 179521)
11 Catherine L. Coughlin, Esq. (SBN 295812)
12 Sara K. Richards, Esq. (SBN 317603)
13 SCHWERDTFEGER LAW GROUP, APC
14 501 West Broadway, Suite 2040
15 San Diego, CA 92101
Telephone: (619) 595-3403
Facsimile: (619) 595-3404
sds@sdsattorneys.com
clc@sdsattorneys.com

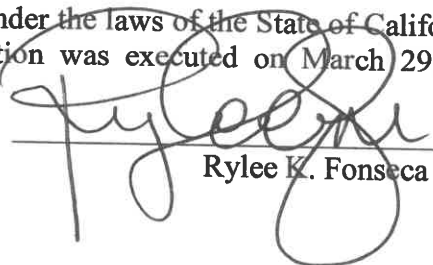
16 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
17 processing of correspondence for mailing with the United States Postal Service
18 and that each day's mail is deposited with the United States Postal Service that
19 same day in the ordinary course of business. On the date set forth above, I served
20 the aforementioned document(s) on the parties in said action by placing a true
copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
collection and mailing on this date, following ordinary business practices, at Elk
Grove, California, addressed as set forth above.

21 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

22 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
24 personally delivered via the following courier service: UPS.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct, and that this declaration was executed on March 29, 2021, at Elk Grove,
California.

27 
28 Rylee K. Fonseca