

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
3 MAYA CHEAITANI (PL 507677)
maya@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 16530 Ventura Blvd., Ste. 203
Encino, CA 91436
6 Telephone: (213) 275-9094
7 Facsimile: (213) 634-2485

8 Attorneys for Plaintiff,
9 TUAN HOANG, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**
12 **(UNLIMITED JURISDICTION)**

13 TUAN HOANG, on behalf of himself, all others
14 similarly situated, and as an “aggrieved
15 employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 MDC VACUUM PRODUCTS, LLC, a
19 Delaware limited liability company; MDC
20 PRECISION, LLC, a Delaware limited liability
company; and DOES 1-50, inclusive,

21 *Defendants.*
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Case No.: **21CV376678**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201–203);
6. Failure to Maintain Accurate Employment Records (Lab. Code §§ 1174, 1174.5, and 1998);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

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ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave, Suite 201
Huntington Beach, CA 92649
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

1 Plaintiff, TUAN HOANG (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant MDC
5 VACUUM PRODUCTS, LLC, a Delaware limited liability company, MDC PRECISION, LLC,
6 a Delaware limited liability company, and DOES 1-50, inclusive (collectively “Defendants”) for
7 alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 1-
8 2001 (hereafter “the Wage Order”), and the Business and Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ alleged failures to: (1) Provide all
12 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
13 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for
14 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete
15 itemized written wage statements, (5) Timely pay all final wages upon termination of
16 employment, (6) Maintain accurate employment records, and (7) Fairly compete. Accordingly,
17 Plaintiff now seeks to recover unpaid wages and related relief through this class and representative
18 action.

19 **PARTIES**

20 3. Plaintiff TUAN HOANG is a resident of California.

21 4. Defendants hired Hoang as an hourly expeditor at their San Jose, California
22 manufacturing facility in or about January 9, 2017, and continuously employed him in this
23 capacity until on or about September 1, 2020.

24 5. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
25 California Code of Regulations § 11050 and an “aggrieved employee” within the meaning of
26 Labor Code § 2699(c).

27 6. Defendant MDC VACUUM PRODUCTS, LLC, is a limited liability company
28 organized and existing under the laws of Delaware and a citizen of California based on Plaintiff’s
information and belief.

7. Defendant MDC PRECISION, LLC, is a limited liability company organized and
existing under the laws of Delaware and a citizen of California based on Plaintiff’s information



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Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 and belief.

2 8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
3 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
4 is informed and believes and thereon alleges that said Defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
6 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

7 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
9 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
10 and scope of such agency or employment and with the approval and ratification of each of the
11 other Defendants.

12 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
14 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
described class in accordance with applicable laws as alleged herein.

15 11. Plaintiff is informed and believes and thereon alleges that each and every one of
16 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
17 each acting as agents and/or employees, and/or under the direction and control of each of the other
18 Defendants, and that said acts and failures to act were within the course and scope of said agency,
19 employment, and/or direction and control.

20 CLASS ALLEGATIONS

21 12. This action has been brought and may be maintained as a class action pursuant to
22 California Code of Civil Procedure § 382 because there is a well-defined community of interest
23 among the persons who comprise the readily ascertainable class defined below and because
24 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
action.

25 13. **Class Definition:** The Class is defined as follows: All California-based persons
26 Defendants employed on an hourly basis, including as expeditors and in comparable positions, at
27 any time during the period beginning four years prior to the filing of this action and ending on the
28 date that final judgment is entered in this action (“Class” or “Class Members”).



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16530 Ventura Blvd., Ste. 203
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(818) 582-3086 Tel
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1 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765 (b), Plaintiff reserves the
2 right to amend or modify the class definition with greater specificity, by further division into
3 subclasses and/or by limitation to particular issues.

4 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
5 each individual Class Member is impractical. While Plaintiff does not currently know the exact
6 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
7 minimum required for numerosity under California laws.

8 16. **Commonality and Predominance:** Common questions of law and fact exist as to
9 all Class Members and predominate over any questions which affect only individual Class
10 Members. These questions include, but are not limited to:

11 A. Whether Defendants failed to provide the Class Members with all meal and
12 rest periods in compliance with California law;

13 B. Whether Defendants failed to pay all wages earned to the Class Members
14 for all hours worked at the correct rates of pay;

15 C. Whether Defendants failed to indemnify the Class Members for the
16 reasonable expenses they incurred during the course of performing their duties;

17 D. Whether Defendants knowingly and intentionally failed to provide the
18 Class Members with accurate written wage statements;

19 E. Whether Defendants willfully failed to provide the Class Members with
20 timely final wages upon termination of employment;

21 F. Whether Defendants willfully failed to maintain accurate employment
22 records of the Class Members;

23 G. Whether Defendants engaged in unfair competition within the meaning of
24 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

25 H. Whether Class Members are entitled to restitution of money or property
26 that Defendants may have acquired from them through alleged Labor Code violations.

27 17. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
28 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.

 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative



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1 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
2 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
3 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
4 Members.

5 19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
6 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
7 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
8 Plaintiff and absent Class Members.

9 20. **Superiority:** A class action is vastly superior to other available means for fair and
10 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
11 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
12 and efficiently prosecute their common claims in a single forum without the unnecessary
13 duplication of effort and expense that numerous individual actions would entail. In addition, the
14 monetary amounts due to many individual Class Members are likely to be relatively small and
15 would thus make it difficult, if not impossible, for individual Class Members to both seek and
16 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
17 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
18 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

19 **STATEMENT OF FACTS**

20 21. Defendants hired Plaintiff as an hourly expeditor at their San Jose, California
21 manufacturing facility on or about January 9, 2017, and continuously employed him in this
22 capacity until on or about September 1, 2010. Defendants at all relevant times paid Plaintiff and
23 the Class Members on a bi-weekly basis at an hourly rate of pay. At all relevant times, Plaintiff
24 and the Class Members were non-exempt hourly employees entitled to the protections of both the
25 Labor Code and the Wage Order.

26 22. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
27 with all timely rest and meal periods. Due to their work load and several daily morning meetings
28 with management, Plaintiff and the Class Members were denied their 30-minute off-duty meal
period within the first five hours of work. Defendants required Plaintiff and the Class Members
to clock-out for their meal periods at the same time every day, even if the meal period did not
occur at that time. At all relevant times, Defendants required Plaintiff and the Class Members to



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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perform work while clocked-out. Further, Plaintiff and the Class Members were frequently forced to work while eating when meal periods were delayed.

23. Defendants also failed to authorize and permit Plaintiff and the Class Members to take ten-minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. Defendants' management never authorized breaks and the heavy work load Defendants assigned the Class Members to complete did not permit them.

24. Defendants failed to pay Plaintiff and the Class Members premium wages for each workday they failed to provide them with a timely meal period in compliance with California law. Additionally, Defendants failed to pay Plaintiff and the Class Members premium wages for each workday they failed to provide them with a timely rest period in compliance with California law.

25. At all relevant times, Defendants failed to compensate Plaintiff and the Class Members for all hours worked at the correct rates of pay, including but not limited to, overtime and double-time wages. Many times, Defendants required Plaintiff and the Class Members to work all seven days in the same workweek.

26. Further, Defendants required Plaintiff and the Class Members to provide their own transportation to perform their travel-related duties, including travel between Defendants' facilities and Defendants' customers. However, Defendants did not reimburse them for mileage expenses. Defendants also required Plaintiff and the Class Members to use their personal mobile phones for work purposes but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones.

27. At all relevant times, Defendants paid Plaintiff and the Class Members with a non-discretionary productivity bonus. Plaintiff and the Class Members often earned the productivity bonuses during workweeks in which they worked more than eight hours in a workday or more than forty hours in a workweek. Defendants, however, failed to include the productivity bonuses in their calculations of the regular rates of pay for purposes of calculating overtime wages. Consequently, Defendants underpaid overtime wages earned by Plaintiff and the Class Members during those periods in which they worked overtime hours and earned productivity bonuses.

28. Defendants failed to issue to Plaintiff and the Class Members complete and accurate wage statements as a result of their failure to state all hours worked at the correct rates of pay, and all wages earned including rest periods and meal periods premium wages. Defendants also failed to timely pay Plaintiff and the Class Members all earned wages. Moreover, Defendants



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 failed to maintain accurate employment records of Plaintiff and the Class Members.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

4 **(Lab. Code §§ 226.7, 512, and 1198)**

5 **(By Plaintiff and the Class against all Defendants)**

6 29. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 30. At all relevant times during the applicable limitations period, Plaintiff and the
8 Class Members have been employees of Defendants and entitled to the benefits and protections
9 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

10 31. In relevant part, California Labor Code § 1198 states:

11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and
13 the standard conditions of labor for employees. The employment
14 of any employee for longer hours than those fixed by the order or
15 under conditions of labor prohibited by the order is unlawful.

16 32. In relevant part, California Labor Code § 512 states:

17 An employer shall not employ an employee for a work period of
18 more than five hours per day without providing the employee with
19 a meal period of not less than 30 minutes, except that if the total
20 work period per day of the employee is no more than six hours, the
21 meal period may be waived by mutual consent of both the
22 employer and employee.

23 An employer shall not employ an employee for a work period of
24 more than 10 hours per day without providing the employee with
25 a second meal period of not less than 30 minutes, except that if the
26 total hours worked is no more than 12 hours, the second meal
27 period may be waived by mutual consent of the employer and the
28 employee only if the first meal period was not waived.

33. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) “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.



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Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 However, a rest period need not be authorized for employees
2 whose total daily work time is less than three and one-half (3 1/2)
3 hours. Authorized rest period time shall be counted as hours
4 worked for which there shall be no deduction from wages.”

5 (B) If an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this Order, the
7 employer shall pay the employee one (1) hour of pay at the
8 employee’s regular rate of compensation for each work day that
9 the rest period is not provided.”

10 34. In relevant part, § 11 of the Wage Order states:

11 **Meal Periods**

12 (A) “No employer shall employ any person for a work period
13 of more than five (5) hours without a meal period of not less than
14 30 minutes, except that when a work period of not more than six
15 (6) hours will complete the day’s work the meal period may be
16 waived by mutual consent of the employee and the employee.
17 Unless the employee is relieved of all duty during a 30-minute
18 meal period, the meal period shall be considered an ‘on duty’ meal
19 period and counted as time worked. An ‘on duty’ meal period shall
20 be permitted only when the nature of the work prevents an
21 employee from being relieved of all duty and when by written
22 agreement between the parties an on-the-job paid meal period is
23 agreed to. The written agreement shall state that the employee
24 may, in writing, revoke the agreement at any time.”

25 (B) If an employer fails to provide an employee a meal period
26 in accordance with the applicable provisions of this Order, the
27 employer shall pay the employee one (1) hour of pay at the
28 employee’s regular rate of compensation for each work day that
the meal period is not provided.”

35. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during
a meal or rest 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.

(c) If an employer fails to provide an employee a meal period
or rest period in accordance with a state law, including, but not
limited to, an applicable statute or applicable regulation, standard,
or order of the Industrial Welfare Commission, the Occupational



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

36. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

37. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

38. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

39. At all relevant times, Defendants failed to provide all meal and paid rest periods to Plaintiff and the Class Members in compliance California law. Defendants often required Plaintiff and the Class Members to clock-out while still working, and take late meal periods. Defendants also required Plaintiff and the Class Members to work during their meal or rest periods. Moreover, Defendants failed to authorize and permit Plaintiff and the Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely meal and rest periods.

40. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods and rest breaks required by California law.

41. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional wages owed for all meal periods and rest breaks not provided to them.

42. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them, and for workdays in which one or more rest breaks were



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against Defendants)

43. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

44. At all relevant times, Plaintiff and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

45. In relevant part, § 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.



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1 46. Labor Code § 510 states:

2 Eight hours of labor constitutes a day's work. Any work in excess
3 of eight hours in one workday and any work in excess of 40 hours
4 in any one workweek and the first eight hours worked on the
5 seventh day of work in any one workweek shall be compensated at
6 the rate of no less than one and one-half times the regular rate of
7 pay for an employee. Any work in excess of 12 hours in one day
8 shall be compensated at the rate of no less than twice the regular
9 rate of pay for an employee. In addition, any work in excess of
10 eight hours on any seventh day of a workweek shall be
11 compensated at the rate of no less than twice the regular rate of pay
12 of an employee. Nothing in this § requires an employer to combine
13 more than one rate of overtime compensation in order to calculate
14 the amount to be paid to an employee for any hour of overtime
15 work.

16 47. Labor Code § 1194 invalidates any agreement between an employer and an
17 employee to work for less than the minimum wage required under the applicable Wage Order.

18 48. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
19 than the minimum wage required under the applicable Wage Order for all hours worked during a
20 payroll period.

21 49. Labor Code § 1198 makes it unlawful for an employer to employ an employee
22 under conditions that violate the Wage Order.

23 50. In conjunction, these provisions of the Labor Code require employers to pay non-
24 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
25 worked, including unrecorded hours when the employer knew or reasonably should have known
26 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
27 Cal.4th 575, 585.)

28 51. At all relevant times during the applicable limitations period, Defendants failed to
compensate Plaintiff and the Class Members for all hours worked by failing to pay them for all
hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive
day of work, on-duty meal periods, and unpermitted rest periods.

52. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Class Members for all hours worked as required by
California law.



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53. As a result of Defendants' unlawful conduct, Plaintiff and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

54. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against Defendants)

55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

56. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.

57. In pertinent part, California Labor Code § 2802 (a) states:

“An employer shall indemnify his or her employee [s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

58. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

59. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify them for both during and after their employment ended. Defendants required Plaintiff and the Class Members to travel between Defendants' facilities and vendors without reimbursing them for doing so. They also required Plaintiff and the Class Members to use their personal phones for working purposes, and did not reimburse them for phone expenses.

60. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred



1 during the course of performing their duties.

2 61. Therefore, pursuant to California Labor Code § 2802 (b), Plaintiff and the Class
3 Members are entitled to reimbursement for all necessary expenditures and losses and interest
4 thereon, due and owing to them within four years of the date of the filing of the Complaint until
5 the entry of judgment.

6 62. Accordingly, with respect to this cause of action, on behalf of himself and the
7 Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys'
8 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

11 **(Lab. Code § 226)**

12 **(By Plaintiff and the Class against all Defendants)**

13 63. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

14 64. At all relevant times during the applicable limitations period, Plaintiff and the
15 other Class Members have been employees of Defendants and entitled to the benefits and
16 protections of California Labor Code § 226.

17 65. Pursuant to California Labor Code § 226 (a), Plaintiff and the other Class
18 Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate
19 itemized statement showing:

- 20 (1) Gross wages earned,
- 21 (2) Total hours worked by the employee, except for any employee whose
22 compensation is solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
- 24 (3) The number of piece rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis,
- 26 (4) All deductions, provided that all deductions made on written orders of the
27 employee may be aggregated and shown as one item,
- 28 (5) Net wages earned,
- (6) The inclusive dates of the period for which the employee is paid,
- (7) The name of the employee and his or her social security number, except
that by January 1, 2008, only the last four digits of his or her social security number or an



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1 employee identification number other than a social security number may be shown on the itemized
2 statement,

3 (8) The name and address of the legal entity that is the employer, and

4 (9) All applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 66. Pursuant to California Labor Code § 226 (e), an employee suffering injury as a
7 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
8 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
9 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
10 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
11 is entitled to an award of costs and reasonable attorneys' fees.

12 67. Pursuant to California Labor Code § 226 (e), an employee is deemed to suffer
13 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
14 injury if the employer fails to provide accurate and complete information as required by California
15 Labor Code § 226 (a) and the employee cannot "promptly and easily determine" from the wage
16 statement alone one or more of the following:

17 A. The amount of the gross wages or net wages paid to the employee during
18 the pay period or any of the other information required to be provided on the itemized wage
19 statement pursuant to California Labor Code § 226 (a);

20 B. Which deductions the employer made from gross wages to determine the
21 net wages paid to the employee during the pay period;

22 C. The name and address of the employer and, if the employer is a farm labor
23 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
24 address of the legal entity that secured the services of the employer during the pay period; and

25 D. The name of the employee and only the last four digits of his or her social
26 security number or an employee identification number other than a social security number.

27 68. "Promptly and easily determine," as stated in California Labor Code §
28 226 (e), means a reasonable person would be able to readily ascertain the information without
reference to other documents or information.

69. As alleged herein, Defendants failed to provide Plaintiff and the other Class
Members with all meal and rest periods in compliance with California law. They also failed to



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 provide them with premium wages on workdays they failed to provide them with one or more
2 meal and/or rest periods in compliance with California law. Further, Defendants failed to
3 compensate Plaintiff and the other Class Members for all hours worked. As a result, Defendants
4 have failed to properly itemize Plaintiff and the other Class Members' gross and net wages earned,
5 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
6 rate, and other requirements of California Labor Code § 226. As a result, Defendants have
7 violated California Labor Code § 226.

7 70. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

11 71. As a result of being provided with inaccurate wage statements by Defendants,
12 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
13 wage statements were violated and they were misled about the amount of wages they had actually
14 earned and were owed. In addition, the absence of accurate information on their wage statements
15 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
16 and mathematical computations to determine the amounts of wages owed, has caused difficulty
17 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
18 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
19 and the other Class Members were not able to ascertain from the wage statements whether
20 Defendants complied with their obligations under California Labor Code § 226 (a).

21 72. Pursuant to California Labor Code § 226 (e), Plaintiff and the other Class
22 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
23 for the initial pay period in which a violation of California Labor Code § 226 (a) occurred and
24 one hundred dollars for each violation of California Labor Code § 226 (a) in a subsequent pay
25 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member,
26 and are also entitled to an award of costs and reasonable attorneys' fees.

27 73. Accordingly, with respect to this cause of action, on behalf of himself and the other
28 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
proof.



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
SpivakLaw.com

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

74. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

75. At all relevant times during the applicable limitations period, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201-203, and the Wage Order.

76. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

77. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

78. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

79. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Defendants. By failing to pay Plaintiff and the Class Members as set forth above by such time, Defendants are liable for violations of Labor Code §§ 201, 202, and 203.

80. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

81. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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SIXTH CAUSE OF ACTION
FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS
(Lab. Code §§ 1174, 1174.5, 1198)

(By Plaintiff and the Class against all Defendants)

82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

83. At all relevant times, Plaintiff and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 1174, 1174.5, 1198 and the Wage Order.

84. Labor Code § 1174, which also pertains to recordkeeping, states:
Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

85. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

86. Section 7 of Wage Order states,

A. Every employer shall keep accurate information with respect to each employee including the following:

1) Full name, home address, occupation and social security number.



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- 2) Birth date, if under 18 years, and designation as a minor.
- 3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- 4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- 5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- 6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

B. Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

C. All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and 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. An employee's records shall be available for inspection by the employee upon reasonable request.

D. Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

87. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

88. Defendants have failed to maintain the records required by the Labor Code and the Wage Order, including but not limited to, the total premium wages earned for missed meal



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1 and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Class
2 Members.

3 89. Plaintiff is informed and believes that Defendants' failure to maintain the records
4 of Plaintiff and the Class have been willful in that Defendants have the duty and ability to
5 maintain accurate employment records in accordance with Labor Code §§ 1174, 1174.5, and
6 1198 and the Wage Order but have intentionally adopted policies or practice that are
incompatible with those requirements.

7 90. As a result of Defendants' unlawful conduct, Plaintiff and the other class
8 members have suffered damages in an amount, subject to proof, to the extent they were not paid
9 the full amount of wages earned during each pay period during the applicable limitations period,
10 including but not limited to the total premium wages earned for missed meal and rest periods,
11 split shift premiums, overtime records, records pertaining to unpaid hours worked and unpaid
12 reporting time pay.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(Bus. & Prof. Code §§ 17200, et seq.)**

16 **(By Plaintiff and the Class against all Defendants)**

17 91. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

18 92. At all relevant times during the applicable limitations period, Plaintiff and the
19 other Class Members have been employees of Defendants and entitled to the benefits and
protections of the Business and Professions Code §§ 17200, et seq.

20 93. The unlawful conduct of Defendants alleged herein amounts to and constitutes
21 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
22 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
23 unfairly gained a competitive advantage over other comparable companies doing business in
24 California that comply with their legal obligations to, among other things, pay their employees
25 premium wages for workdays in which they did not provide employees with one or more meal
26 and rest periods, reimburse their employees for reasonable expenses incurred during the course
27 of performing their duties, and pay them all earned wages for all regular and overtime hours
28 worked.

94. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the



1 other Class Members have suffered injuries in fact and lost money or property. Defendants
2 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
3 premium wages and reimbursement for expenses that Plaintiff and the other Class Members
4 incurred during the course of performing their duties.

5 95. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
6 other Class Members are entitled to restitution of all monies rightfully belonging to them that
7 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
8 and unfair business practices.

9 96. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
10 connection with their unfair competition claims pursuant to California Code of Civil Procedure
11 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

12 **EIGHTH CAUSE OF ACTION**

13 **CIVIL PENALTIES**

14 **(By Plaintiff and the Class against all Defendants)**

15 97. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 98. The "Aggrieved Employees" are all members of the Class defined above who
17 Defendants employed during the period beginning December 23, 2019 and ending on the date
18 that final judgment is entered in this action.

19 99. Labor Code § 204 states

20 (a) All wages, other than those mentioned in Section 201,
21 201.3, 202, 204.1, or 204.2, earned by any person in any
22 employment are due and payable twice during each calendar
23 month, on days designated in advance by the employer as the
24 regular paydays. Labor performed between the 1st and 15th days,
25 inclusive, of any calendar month shall be paid for between the 16th
26 and the 26th day of the month during which the labor was
27 performed, and labor performed between the 16th and the last day,
28 inclusive, of any calendar month, shall be paid for between the 1st
and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this
section, all wages earned for labor in excess of the normal work
period shall be paid no later than the payday for the next regular
payroll period.

(2) An employer is in compliance with the requirements of
subdivision (a) of Section 226 relating to total hours worked by the



employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

100. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

101. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

102. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

103. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226 (a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts



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Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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1 established by California Labor Code § 226.3).

2 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
3 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
4 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
5 established by California Labor Code § 558).

6 D. For violations of California Labor Code § 1197, one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
8 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
9 pay period (regardless of whether the initial violations were intentionally committed) (penalty
10 amounts established by California Labor Code § 1197.1).

11 E. For violations of California Labor Code § 1174, five hundred dollars
12 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
13 California Labor Code § 1174.5).

14 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
15 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
16 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
17 period for each subsequent violation (penalty amounts established by California Labor Code §
18 2699 (f) (2)).

19 104. Plaintiff has complied with the procedures for bringing suit specified in
20 California Labor Code § 2699.3. By letter dated December 23, 2020, Plaintiff filed written notice
21 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
22 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
23 to have been violated, including the facts and theories to support the alleged violations. A true
24 and correct copy of the notice to the LWDA dated December 23, 2020 is attached as **Exhibit A**.
25 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
26 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
27 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
28 does not intend to investigate these allegations.

105. Pursuant to California Labor Code § 2699 (g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
connection with their claims for civil penalties.



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

- A. An order that the action be certified as a class action;
- B. An order that Plaintiff be appointed class representative;
- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 22, 2021

By



DAVID SPIVAK,
MARALLE MESSRELIAN,
MAYA CHEATANI,
Attorneys for Plaintiff, TUAN HOANG, and all
others similarly situated



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(818) 582-3086 Tel
(818) 582-2561 Fax
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED U.S. MAIL

December 23, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir/tflaforms.net>
Via Electronic Submission

RE: *Tuan Hoang/MDC Vacuum Products, LLC*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq., Tuan Hoang (hereafter “Hoang”) provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to expeditors and workers employed in comparable positions (hereafter “the Aggrieved Employees”) by MDC Vacuum Products, LLC, a Delaware limited liability company, and MDC Precision, LLC, a Delaware limited liability company, (hereafter collectively referred to as “MDC”), of violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, MDC has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Hoang and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission wage order No. 1-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “aggrieved employees” within the meaning of Labor Code section 2699, subdivision (c).

Statement of Facts

MDC hired Hoang as an hourly expeditor at its San Jose, California manufacturing facility in or about January 9, 2017, and continuously employed him in this capacity until on or about September 1, 2020. MDC at all relevant times paid Hoang and the Aggrieved Employees on a bi-weekly basis at an hourly rate of pay. At all relevant times, Hoang and the Aggrieved Employees were non-exempt hourly employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, MDC failed to provide Hoang and the Aggrieved Employees with all timely rest and meal periods. Due to their work load and several daily morning meetings with management, Hoang and the other Aggrieved Employees were denied their 30-minute off-duty meal period within the first five hours of work. MDC required Hoang and the Aggrieved Employees to clock-out for their meal periods at the same time every day, even if the meal period did not occur at that time. At all relevant times, MDC required Hoang and the Aggrieved Employees to perform work while clocked out. Further, Hoang and the Aggrieved Employees were frequently forced to work while eating when meal periods were delayed. MDC also failed to authorize and permit Hoang and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. MDC management never authorized breaks and the heavy work load MDC assigned the Aggrieved Employees to complete did not permit them. MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely meal period in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with a timely rest period in compliance with California law.

At all relevant times, MDC failed to compensate Hoang and the Aggrieved Employees for all hours worked at the correct rates of pay, including but not limited to, overtime and double-time wages. Many times, MDC required Hoang and the Aggrieved Employees to work all seven days in the same work week.

Further, MDC required Hoang and the Aggrieved Employees to provide their own transportation to perform their travel-related duties, including travel between MDC facilities and MDC customer. However, MDC did not reimburse them for mileage expenses. MDC also required Hoang and the Aggrieved Employees to use their personal mobile phones for work purposes but did not reimburse them for their mobile phone expenses, nor did they provide them with mobile phones.

At all relevant times, MDC paid Hoang and the Aggrieved Employees with a non-discretionary productivity bonus. Hoang and the Aggrieved Employees often earned the productivity bonuses during workweeks in which they worked more than eight hours in a workday or more than 40 hours in a workweek. MDC, however, failed to include the productivity bonuses in its calculations of the regular rates of pay for purposes of calculating overtime wages. Consequently, MDC underpaid overtime wages earned by Hoang and the Aggrieved Employees during those periods in which they worked overtime hours and earned productivity bonuses.

MDC failed to issue to Hoang and the Aggrieved Employees complete and accurate wage statements as a result of its failure to state all hours worked at the correct rates of pay, and all wages earned including rest period and meal period premium wages. MDC also failed to timely pay Hoang and the Aggrieved Employees all earned wages. Moreover, MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

For the reasons herein, Hoang alleges the following violations of the Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- (a) MDC failed to pay Hoang and the Aggrieved Employees all wages earned for all hours worked.
- (b) MDC failed provide Hoang and the Aggrieved Employees with all uninterrupted meal and paid rest periods.

- (c) MDC failed to pay Hoang and the Aggrieved Employees premium wages for all workdays it failed to provide them with one or more uninterrupted meal or paid rest periods.
- (d) MDC failed to indemnify Hoang and the Aggrieved Employees for all automobile and phone expenses incurred during the course of performing their duties.
- (e) MDC failed to provide Hoang and the Aggrieved Employees with accurate wage statements.
- (f) MDC failed to timely pay Hoang and the Aggrieved Employees all earned and unpaid wages during their employment at MDC.
- (g) MDC failed to maintain accurate employee records of Hoang and the Aggrieved Employees.

Accordingly, Hoang now seeks civil penalties on behalf of himself and the Aggrieved Employees based on MDC's alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry." (*Id.* § 1.) "'Manufacturing Industry' means any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packaging goods, articles, or commodities, in whole or in part." (*Id.* § 2, subd. (H).)

At all relevant times during the applicable limitations period, MDC's main purpose of business was to produce vacuum technology. Therefore, Hoang and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

In relevant part, section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half ($1\frac{1}{2}$) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth ($1/40$) of the employee's weekly salary

In relevant part, Labor Code section 510 states,

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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Labor Code section 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wages or the legal overtime compensation applicable to the employee 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.

Under Labor Code section 1197, "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."

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000).)

MDC failed to pay Hoang and the Aggrieved Employees for all hours worked by failing to pay them for all hours worked in excess of eight hours per day, in excess of eight hours on the seventh consecutive day of work, on-duty meal periods, and unpermitted rest periods.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code section 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
4. \$100 for each aggrieved hourly employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved hourly employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203 (penalties set by California Labor Code section 1197.1).

Failure to Provide Meal and Paid Rest Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods

- (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.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (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.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

In relevant part, section 12 of the Wage Order states:

Rest Periods

- (A) 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

often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code section 226.7 states:

- (b) 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.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited 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, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recover period is not provided.

MDC failed to provide all meal and paid rest periods to Hoang and the Aggrieved Employees in compliance with California law. MDC often required Hoang and the Aggrieved Employees to clock out while still working, and take late meal

periods. MDC also required Hoang and the Aggrieved Employees to work during their meal or rest periods. Moreover, MDC failed to provide ten minute rest breaks every four hours or major fraction thereof. MDC failed to pay Hoang and the Aggrieved Employees premium wages on workdays it failed to provide them with one or more meal periods in compliance with California law. Additionally, MDC failed to pay Hoang and the Aggrieved Employees premium wages for each workday it failed to provide them with one or more timely rest periods in compliance with California law.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of California Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, Labor Code section 2802, subdivision (a), states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

MDC required Hoang and the Aggrieved Employees to travel between MDC facilities and vendors without reimbursing them for doing so. They also required Hoang and the Aggrieved Employees to use their personal phones for working purposes, and did not reimburse them for phone expenses.

Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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.

An employee is deemed to have suffered injury under section 226 if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor Code section 226, subdivisions (a)(1)–(9) and the employee cannot “promptly and easily” ascertain one or more of the following without reference to other documents or information:

- The amount of gross wages or net wages paid during the pay period;
- The total number of hours worked if the employee is not salaried; and
- The number of piece-rate units earned and the piece rate.

At all relevant times during the applicable limitations period, MDC violated California Labor Code section 226 because it did not properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. MDC failed to state in the wage statements it issued to Hoang and the other aggrieved employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to clocking in at the beginning of their shifts.

MDC’s violation was knowing and intentional. Hoang and the Aggrieved Employees often complained about MDC’s Labor Code violations to human resources. Hoang and the Aggrieved Employees notified MDC that it failed to provide them with duty free meal and rest periods. MDC ignored their complaints.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226, subdivision (a), and \$1,000 for each aggrieved

employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

MDC failed to pay Hoang and the Aggrieved Employees all wages earned, including but not limited to all minimum, hourly, and overtime wages and premium wages on workdays it failed to provide them with a meal or paid rest period in compliance with California law, within the time periods set by Labor Code section 204. As a result, MDC failed to timely pay Hoang and the Aggrieved Employees all wages due during employment.

Accordingly, Hoang seeks civil penalties on behalf of himself and the Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee, plus 25 percent of the amount unlawfully withheld from each aggrieved employee, for each subsequent violations (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

MDC failed to pay Hoang and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with MDC. By failing to pay Hoang and the Aggrieved Employees as set forth above by such time, MDC is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Hoang seeks civil penalties from MDC as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and

complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the

employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

- (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and 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. An employee's records shall be available for inspection by the employee upon reasonable request.
- (D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

MDC has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Hoang and the Aggrieved Employees. Accordingly, Hoang seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699, subdivision (f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Tuan Hoang
Walter Haines, Esq.

MDC Vacuum Products, LLC
c/o Agent for Service of Process
Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Vacuum Products, Inc., an entity of unknown form
c/o Paul Downey
30962 Santana St
Hayward, CA 94544

MDC Precision Products, LLC
c/o HR Generalist/Recruiter
Sam Patel
30962 Santana St
Hayward, CA 94544