

Arlo García Uriarte, SBN 231764
Ernesto Sanchez, 278006
LIBERATION LAW GROUP, P.C.
2760 Mission Street
San Francisco, CA 94110
Telephone: (415) 695-1000
Facsimile: (415) 695-1006

Attorneys for PLAINTIFF
CARLOS LOPEZ

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Superior Court of CA,
County of Santa Clara
21CV382011
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

Carlos Lopez, individually and on behalf of others
similarly situated,

Plaintiff,

v.

Bay Mountain Air, Inc.; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: **21CV382011**

CLASS ACTION COMPLAINT

- (1) FAILURE TO PAY ALL HOURS WORKED**
- (2) FAILURE TO PAY ALL OVERTIME HOURS WORKED**
- (3) MEAL PERIOD VIOLATIONS**
- (4) REST PERIOD VIOLATIONS**
- (5) WAGE STATEMENT VIOLATIONS**
- (6) WAITING TIME PENALTIES**
- (7) FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES**
- (8) PRIVATE ATTORNEYS GENERAL ACT**
- (9) UNFAIR COMPETITION IN VIOLATION OF CAL. BUSINESS AND PROFESSIONS CODE §§ 17200 ET. SEQ**

JURY TRIAL DEMANDED

1 Plaintiff Carlos Lopez (hereinafter "PLAINTIFF") submits this Complaint against Bay
2 Mountain Air, Inc. (hereinafter "DEFENDANT") and DOES 1 through 25, inclusive
3 (hereinafter "DOES") (collectively "DEFENDANTS"). The allegations below are made on
4 PLAINTIFF'S information and belief:

5 **INTRODUCTION**

6 2. This class action is for the purpose of prosecuting claims under California Labor Code
7 ("Labor Code") including but not necessarily limited to §§ 201-204, 221, 223, 226, 226.7, 512,
8 1174, 1194, and 2698, et seq. ("Private Attorneys General Act"), 2802, and California Business
9 and Professions Code § 17200, et seq. ("Unfair Trade Practices Act"), and Industrial Welfare
10 Commission ("IWC") Wage Order 16.

11 3. This complaint challenges systemic illegal employment practices by DEFENDANTS
12 resulting in violations of the California Labor Code, Business and Professions Code, and the
13 applicable IWC Wage Order.

14 4. The Private Attorneys General Act ("PAGA") codified in Cal. Labor Code §2698, et
15 seq., allows a private citizen to pursue civil penalties on behalf of the State of California Labor
16 and Workforce Development Agency ("LWDA"). The aggrieved employee is allowed to seek
17 civil penalties not only for violations that he or she personally suffered but also for violations of
18 "other current or former employees."

19 5. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS,
20 jointly and severally, have acted intentionally and with deliberate indifference and conscious
21 disregard to the rights of all employees in receiving all wages and other benefits due and
22 minimally required of every employer under California law.

23 6. PLAINTIFF is informed and believes and based thereon allege that DEFENDANTS
24 have engaged in, among other things, a system of willful violations of the California Labor
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Code, Business and Professions Code, and Wage Order 16 by creating and maintaining policies, practices, and customs that knowingly deny employees: (1) wages for all hours worked (regular and overtime); (2) compensation for improper/inadequate meal periods; (3) compensation for denied/proper rest breaks; (4) accurate/itemized wage statements; (5) waiting time penalties; and (6) reimbursement for business-related expenses.

7. The policies, practices, and customs of DEFENDANTS described above and below have resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code, Business and Professions Code, and Wage Order 16.

II. JURISDICTION AND VENUE

8. The Court has jurisdiction over the violations of the Labor Code §§ 201-204, 221, 223, 226, 226.7, 512, 1174, 1194, and 2698, et seq., 2802, and California Business and Professions Code § 17200, et seq., and Wage Order 16.

9. Jurisdiction is proper in this Court because alleged damages exceed Twenty-five Thousand Dollars (\$25,000.00).

10. PLAINTIFF meets the requirements of C.C.P. § 382 to bring this action because, among other reasons, the question is one of common or general interest, is a question of many persons and/or the parties are numerous, and it is impracticable to bring them all before the Court.

11. Venue is proper because PLAINTIFF worked for DEFENDANTS in the County of Santa Clara.

III. PARTIES

12. PLAINTIFF is an individual.

13. DEFENDANT is registered with the California Secretary of State as a corporation. DEFENDANT'S principal place of business is 88 Dillon Avenue, Campbell, California.

1 14. DEFENDANTS were employers of PLAINTIFF and other employees similarly situated
2 during the relevant class claim period.

3 15. At all times herein mentioned DEFENDANTS are and were corporations, business entities,
4 individuals, and partnerships, licensed to do business and actually doing business in the
5 State of California. DEFENDANTS own and operate an industry, business, and
6 establishment within California. As such, and based upon all the facts and circumstances
7 incident to DEFENDANTS' business in California, DEFENDANTS are subject to
8 California laws that regulate the employment and working conditions of employees in
9 California, including California Labor Code §§ 201-204, 221, 223, 226, 226.7, 512, 1174,
10 1194, and 2698, et seq., 2802, and California Business and Professions Code § 17200, et
11 seq., and Wage Order 16.
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13 16. PLAINTIFF does not know the true names or capacities, whether individual, partner, or
14 corporate, of the defendants sued herein as DOES 1 through 25, inclusive, and for that reason,
15 said defendants are sued under such fictitious names, and PLAINTIFF prays leave to amend this
16 complaint when the true names and capacities are known. PLAINTIFF is informed and
17 believes and thereon alleges that each of said fictitious defendants were responsible in some
18 way for the matters alleged herein and proximately caused PLAINTIFF and members of the
19 class to be subject to the illegal employment practices, wrongs, and injuries complained of
20 herein.
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23 **IV. STATEMENT OF FACTS**

24 17. PLAINTIFF worked for DEFENDANTS from approximately to November 10, 2019 to
25 September 18, 2020.

26 18. The class period is four years from the filing of this action, through the entry of final
27 judgment in this action ("CLASS PERIOD").
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1 19. PLAINTIFF was a non-exempt, hourly employee of DEFENDANTS. PLAINTIFF
2 worked for DEFENDANTS who are located at 88 Dillon Avenue, Campbell, California.

3 20. PLAINTIFF worked for DEFENDANTS as an installer of air conditioners.

4 21. During the course of his employment, PLAINTIFF regularly worked five (5) days per
5 week for DEFENDANTS.

6 22. During the course of his employment, DEFENDANTS paid PLAINTIFF on a weekly
7 basis.

8 23. During the course of their employment, DEFENDANTS failed to properly record and
9 pay PLAINTIFF and putative class members for all worked hours and at their proper rates of
10 pay.
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12 24. During the course of their employment, DEFENDANTS improperly rounded
13 PLAINTIFF and putative class members' hours worked, resulting in undercompensating
14 PLAINTIFF and putative class members.
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16 25. During the course of their employment, PLAINTIFF and putative class members were
17 regularly scheduled to work eight (8) hours per day. However, PLAINTIFF and putative class
18 members regularly worked over eight (8) hours per day or forty (40) hours per week and were
19 not compensated for this time.

20 26. During the course of their employment, DEFENDANTS failed to properly compensate
21 PLAINTIFF and putative class members for pre- and post-shift off-the-clock hours worked,
22 including overtime off-the-clock hours worked. On average, PLAINTIFF and putative class
23 members worked several minutes before their scheduled start time and several minutes after
24 their scheduled end time per day. Off-the-clock work performed included, but is not limited to,
25 gathering tools and materials, cleaning the job site, filing out forms, receiving work instruction,
26 and putting on work tools and personal protective equipment ("PPE").
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1 27. The off-the-clock hours worked by PLAINTIFF and putative class members pre- and
2 post- shift increased as a result of procedures related to COVID-19.

3 28. During the course of their employment, PLAINTIFF and putative class members were
4 frequently required to drive long distances to their respective sites. DEFENDANTS did not
5 compensate PLAINTIFF and putative class members for travel time when required to drive long
6 distances to their respective job sites.

7 29. PLAINTIFF has knowledge of similarly aggrieved employees who went to
8 DEFENDANTS' warehouse in order to carpool to their respective job sites but were not
9 compensated for time spent carpooling with DEFENDANTS.

10 30. For approximately two (2) weeks, PLAINTIFF carpooled to his respective job site with
11 DEFENDANTS. DEFENDANTS picked up PLAINTIFF at his residence.

12 31. DEFENDANTS did not compensate PLAINTIFF and putative class members for time
13 spent carpooling with DEFENDANTS to their respective job sites.

14 32. During the course of their employment, PLAINTIFF and putative class members worked
15 shifts without the adequate meal periods as required by law. PLAINTIFF and putative class
16 members' meal periods were less than thirty (30) minutes.

17 33. During the course of their employment, DEFENDANTS had a policy and practice of
18 automatically deducting thirty (30) minutes from the hours worked by PLAINTIFF and putative
19 class members regardless of whether they took a full thirty (30) minute meal period or not.

20 34. DEFENDANTS did not have policy or practice to pay meal period premiums when meal
21 periods were not properly provided to PLAINTIFF and putative class members.

22 35. During the course of their employment, DEFENDANTS did not have a policy nor
23 practice of providing PLAINTIFF and putative class members with proper rest breaks of at least
24 ten (10) minutes for every four (4) hours of work or major fraction thereof.
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1 36. During the course of their employment, DEFENDANTS had a policy and practice of
2 combining a thirty (30) minute meal break and two (2) ten (10) minute rest breaks for
3 PLAINTIFF and putative class members per day. DEFENDANTS' failure to stagger the meal
4 and rest breaks of PLAINTIFF and putative class members was not in accord with California
5 law and resulted in unlawful meal and rest breaks.

6 37. DEFENDANTS did not have a policy or practice to pay rest break premiums when rest
7 breaks were not provided to PLAINTIFF and putative class members.

8 38. During the course of their employment, DEFENDANTS failed to reimburse
9 PLAINTIFF and putative class members for work-related expenses.

10 39. During the course of their employment, DEFENDANTS had a policy and practice of
11 providing PLAINTIFF and putative class members with work instructions and information
12 regarding their work schedules and job assignments on their personal cell phones by way of
13 phone call or text message. DEFENDANTS did not reimburse PLAINTIFF and putative class
14 members for expenditures associated with the use of their personal cell phones for work-related
15 purposes.

16 40. During the course of their employment, DEFENDANTS had a policy and practice of not
17 reimbursing PLAINTIFF and putative class members for tools and equipment that they
18 purchased to perform their work duties. This includes, but is not limited to, drills, gloves,
19 hammers, belts, utility knives, screwdrivers, and other items.

20 41. During the course of their employment, DEFENDANTS had a policy and practice of not
21 reimbursing PLAINTIFF and putative class members for expenses associated with the use of
22 their personal vehicles for work-related purposes, including traveling to their respective job
23 sites and reimbursement of parking tickets.
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1 42. DEFENDANTS failed to issue accurate itemized wage statements to PLAINTIFF and
2 putative class members. The wage statements were not accurate in that they did not reflect the
3 required compensation for PLAINTIFF and putative class members for all hours worked, proper
4 rates of pay for hours worked, actual gross and net wages earned, premium pay for denied or
5 improper meal periods and rest breaks, and all reimbursements due.

6 43. DEFENDANTS willfully failed to pay all wages due to PLAINTIFF and putative class
7 members who were discharged or quit, entitling them to receive statutory waiting time
8 penalties.
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10 **V. CLASS ACTION ALLEGATIONS**

11 44. **DEFINITION:** PLAINTIFF brings this action on behalf of himself and a putative class
12 of similarly situated employees pursuant to California Code of Civil Procedure § 382. The class
13 is defined as:

14 “All current and former hourly or non-exempt employees of DEFENDANTS who worked in the
15 State of California at any time from four years from the date of the filing of this action through
16 the entry of final judgment in this action.”
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18 45. **NUMEROSITY AND ASCERTAINABILITY:** The members of the class are so
19 numerous that joinder of all members would be impractical, if not impossible. PLAINTIFF is
20 informed and believes that there are over thirty-five (35) employees working for
21 DEFENDANTS in California at any one time. The identity of putative class members is readily
22 ascertainable by review of DEFENDANTS’ records. Notice can be provided to
23 DEFENDANTS’ employees using techniques and a form of notice similar to those customarily
24 used in class action lawsuits.
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26 46. PLAINTIFF is informed, believes, and based thereon alleges that DEFENDANTS’
27 employees are denied:
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- a) Compensation for all hours worked;
- b) Compensation for all overtime hours worked;
- c) Missed or improper rest period compensation;
- d) Missed or improper meal period compensation;
- e) Reimbursement for business-related expenses;
- f) Accurate itemized wage statements; and
- g) Waiting time penalties.

47. **ADEQUACY OF REPRESENTATION:** PLAINTIFF is a member of the putative class. PLAINTIFF does not have any conflicts of interest with other putative class members and will prosecute the case vigorously on behalf of the putative class. PLAINTIFF will fairly and adequately represent and protect the interests of putative class members. PLAINTIFF'S counsel is competent and experienced in litigating wage and hour class actions.

48. **SUPERIORITY OF CLASS ACTION:** A class action is superior to all other available means of fair and efficient adjudication of this controversy. Individual joinder of all putative class members is not practicable, and questions of law and fact common to the putative class predominate over any questions affecting only individual members of the class.

DEFENDANTS' employees have been damaged and are entitled to recovery by reason of DEFENDANTS' unlawful policies and/or practices described herein. Because the damages suffered by individual putative class members may be relatively small, albeit significant, the expense and burden of individual litigation make it impractical for most putative class members to seek individual redress for the wrongful conduct alleged. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

1 49. The Labor Code and Wage Order 16 are broadly remedial in nature. These laws and
2 labor standards serve an important public interest in establishing minimum working conditions
3 and standards in California. These laws and labor standards protect the average working
4 employee from exploitation by employers who may seek to take advantage of superior
5 economic conditions and bargaining power in setting onerous terms and conditions of
6 employment.

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8 50. The nature of this action and the format of laws available to PLAINTIFF and members
9 of the putative class identified herein make the class action format a particularly efficient and
10 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
11 file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an
12 unconscionable advantage since it would be able to exploit and overwhelm the limited resources
13 of PLAINTIFF with their vastly superior financial and legal resources. Requiring each putative
14 class member to pursue an individual remedy would also discourage the assertion of lawful
15 claims by employees who would be disinclined to file an action against their former and/or
16 current employer for real and justifiable fear of retaliation and permanent damage to their
17 careers at subsequent employment.

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19 51. The prosecution of separate actions by individual putative class members, even if
20 possible, would create a substantial risk of: (a) Inconsistent or varying adjudications with
21 respect to individual putative class members against the DEFENDANTS, which would establish
22 potentially incompatible standards of conduct for the DEFENDANTS; and/or (b) Adjudications
23 with respect to individual putative class members which would, as a practical matter, be
24 dispositive of the interest of the other putative class members not parties to the adjudications, or
25 which would substantially impair or impede the ability of DEFENDANTS' aggrieved
26 employees to protect their interests. Further, the claims of the individual members of the
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1 putative class are not sufficiently large to warrant vigorous individual prosecution considering
2 all of the concomitant costs and expenses.

3 52. **COMMON QUESTION OF LAW AND FACT:** There are questions of law and fact
4 common to putative class members that predominate over any questions affecting only
5 individual members of the class. These common questions of law and fact include:

6 53. Whether DEFENDANTS have failed to pay employees their wages for all hours
7 worked;

8 54. Whether DEFENDANTS have failed to pay employees their wages for all overtime
9 hours worked;

10 55. Whether DEFENDANTS have failed to provide compensation to employees who were
11 not provided rest periods and recovery periods in accordance with applicable law;

12 56. Whether DEFENDANTS have failed to provide compensation to employees who were
13 not provided meal periods in accordance with applicable law;

14 57. Whether DEFENDANTS have failed to reimburse employees for work-related
15 expenses;

16 58. Whether wage statements provided to DEFENDANTS' employees are adequate under
17 applicable law, and whether employees are entitled to receive statutory penalties from
18 DEFENDANTS for each wage statement violation committed; and

19 59. Whether DEFENDANTS willfully failed to pay all wages and premiums due to
20 DEFENDANTS' employees who were discharged or quit, and whether such employees are
21 entitled to receive statutory waiting time penalties from DEFENDANTS.

22 60. **TYPICALITY:** PLAINTIFF'S claims are typical to the claims of all members of the
23 putative class. PLAINTIFF is a member of the putative class and has suffered the alleged,
24 class-wide violations described herein.
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VI. DAMAGES

61. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, PLAINTIFF and putative class members are owed, among other things, payments for all hours worked, missed or improper meal and rest period premiums, unpaid reimbursements owed, waiting time penalties under Labor Code § 203, and other statutory penalties in an amount that exceeds \$25,000, the precise amount of which will be proven at trial.

FIRST CAUSE OF ACTION

By PLAINTIFF and the Class Against DEFENDANTS

(Failure to Pay All Hours Worked)

62. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs above.

63. Pursuant to Wage Order 16 and Cal. Labor Code §§ 201 and 204, DEFENDANTS were required to compensate PLAINTIFF, and similarly situated employees of DEFENDANTS, for all hours worked.

64. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, for all hours worked.

65. PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, worked unpaid hours because their hours worked were not properly recorded.

66. As a result of DEFENDANTS' unlawful acts, PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, have been deprived of compensation for all hours worked in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, under Labor Code §§ 218.5.

67. By violating Wage Order 16 and Labor Code §§ 201 and 204, DEFENDANTS are liable for attorneys' fees and costs under Labor Code §§ 218.5 and 1194.

1 68. PLAINTIFF, on behalf of himself and similarly situated current and former employees
2 of DEFENDANTS, requests relief as described below.

3 **SECOND CAUSE OF ACTION**

4 By PLAINTIFF and the Class Against DEFENDANTS

5 (Failure to Pay Overtime Hours Worked)

6 69. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs
7 above.

8 70. Pursuant to Wage Order 16 and Cal. Labor Code §§ 500, 510, and 1194,
9 DEFENDANTS were required to compensate PLAINTIFF, and similarly situated employees of
10 DEFENDANTS, for all overtime hours worked.

11 71. During the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF, and
12 similarly situated current and former employees of DEFENDANTS, for all overtime hours
13 worked.

14 72. As a result of DEFENDANTS' unlawful acts, PLAINTIFF, and similarly situated
15 current and former employees of DEFENDANTS, have been deprived of compensation for all
16 hours worked in an amount to be determined at trial, and are entitled to recovery of such
17 amounts, plus interest thereon, under Labor Code §§ 218.5.
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19 73. DEFENDANTS are liable for attorneys' fees and costs under Labor Code §§ 218.5 and
20 1194.
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22 74. PLAINTIFF, on behalf of himself and similarly situated current and former employees
23 of DEFENDANTS, requests relief as described below.
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THIRD CAUSE OF ACTION

By PLAINTIFF and the Class Against DEFENDANTS

(Failure to Pay Compensation for Missed & Improper Meal Periods)

75. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs above.

76. Pursuant to Labor Code §§ 226.7(a), 512, and Wage Order 16, DEFENDANTS are required to authorize and permit PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, the opportunity to take meal periods based upon total hours worked, at a rate of thirty (30) minutes net break time per five (5) hours worked.

77. DEFENDANTS failed and refused to authorize and permit PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, thirty (30) minute meal periods for every five (5) hours worked in violation of Labor Code §§ 226.7(a), 512, and Wage Order 16.

78. DEFENDANTS have violated Labor Code §§ 226.7, 512, and Wage Order 16, by failing to pay PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, one (1) hour of pay at their regular rate of pay for each work day meal periods were required but not provided.

79. PLAINTIFF, on behalf of himself and similarly situated current and former employees of DEFENDANTS, requests relief as described below.

FOURTH CAUSE OF ACTION

By PLAINTIFF and the Class Against DEFENDANTS

(Failure to Pay Compensation for Missed & Improper Rest and Recovery Periods)

80. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs above.

1 81. Pursuant to Labor Code § 226.7(a) and Wage Order 16, DEFENDANTS are required to
2 authorize and permit PLAINTIFF, and similarly situated current and former employees of
3 DEFENDANTS, the opportunity to take rest periods based upon total hours worked, at a rate of
4 ten (10) minutes net rest time per four (4) hours worked or major fraction thereof, with no
5 deduction from wages.

6 82. DEFENDANTS failed and refused to authorize and permit PLAINTIFF, and similarly
7 situated current and former employees of DEFENDANTS, ten (10) minute rest periods for
8 every four (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7(a)
9 and Wage Order 16.

10 83. DEFENDANTS have violated Labor Code § 226.7 and Wage Order 16, by failing to pay
11 PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, one (1)
12 hour of pay at their regular rate of pay for each work day rest periods and recovery periods were
13 required but not provided.

14 84. PLAINTIFF, on behalf of himself and similarly situated current and former employees
15 of DEFENDANTS, requests relief as described below.

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18 **FIFTH CAUSE OF ACTION**

19 By PLAINTIFF and the Class Against DEFENDANTS

20 (Failure to Provide Accurate/Itemized Wage Statements)

21 85. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs
22 above.

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24 86. As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFF, and similarly
25 situated current and former employees of DEFENDANTS, an accurate itemized statement in
26 writing showing all gross wages earned, including the premium compensation for any denied
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1 meal and/or rest breaks at the applicable hourly rates of PLAINTIFF and similarly situated
2 current and former employees of DEFENDANTS.

3 87. The wage statements are not accurate in that they do not reflect all actual hours worked,
4 including all overtime hours worked.

5 88. As such, PLAINTIFF, and similarly situated current and former employees of
6 DEFENDANTS, are entitled to payment from DEFENDANTS of the greater of actual damages
7 or \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each
8 subsequent violation, up to a maximum of \$4000.00, pursuant to Labor Code § 226, as well as
9 reasonable attorney's fees and costs of suit.
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11 89. PLAINTIFF, on behalf of himself and similarly situated current and former employees
12 of DEFENDANTS, request relief as described below.

13 **SIXTH CAUSE OF ACTION**

14 By PLAINTIFF and the Class Against DEFENDANTS

15 (Labor Code §§ 201-203- Waiting Time Penalties)

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17 90. PLAINTIFF realleges and incorporate by reference the allegations of the paragraphs
18 above.

19 91. California Labor Code § 201 requires an employer who discharges an employee to pay
20 all compensation due to that employee immediately upon discharge.

21 92. California Labor Code § 202 requires an employer to pay all compensation due to
22 employees who quit within 72 hours of that employee quitting, unless the employee provides at
23 least 72 hours' notice of quitting, in which case all compensation is due at the end of the
24 employee's final day of work.
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1 93. Labor Code § 203 provides that if an employer willfully fails to pay compensation as
2 required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of
3 continued compensation of up to 30 work days.

4 94. DEFENDANTS willfully failed and refused to timely pay compensation and wages,
5 including unpaid wages and overtime compensation, to PLAINTIFF, and other separated
6 employees of DEFENDANTS, at the end of their employment.

7 95. As a result, DEFENDANTS are liable to PLAINTIFF, and other separated employees of
8 DEFENDANTS, for waiting time penalties, together with interest thereon, under Labor Code §
9 203.
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11 96. PLAINTIFF, on behalf of himself and other separated employees of DEFENDANTS,
12 requests relief as described below.

13 **SEVENTH CAUSE OF ACTION**

14 By PLAINTIFF and the Class Against DEFENDANTS

15 (Failure to Reimburse Business-Related Expenses)

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17 97. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs
18 above.

19 98. Pursuant to California Labor Code Section 2802, an employer must indemnify its
20 employees “for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties.”

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23 99. PLAINTIFF, and similarly situated current and former employees of DEFENDANTS,
24 made necessary expenditures and incurred losses as a direct consequence of the discharge of
25 their duties.
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1 100. DEFENDANTS were responsible for reimbursing PLAINTIFF, and similarly situated
2 current and former employees of DEFENDANTS, for their expenditures and losses as a direct
3 consequence of the discharge of their duties but failed to do so.

4 101. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF, and similarly situated
5 current and former employees of DEFENDANTS, have suffered damages. PLAINTIFF, and
6 similarly situated current and former employees of DEFENDANTS, are entitled to recover the
7 full amount of the unpaid expenditures and losses, interest thereon, reasonable attorney's fees
8 and costs of suit.
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10 **EIGHTH CAUSE OF ACTION**

11 By PLAINTIFF and the Class Against DEFENDANTS

12 (Civil Penalties Pursuant to Private Attorney General Act Labor Code §§2698, et seq.)

13 102. PLAINTIFF realleges and incorporates by reference the allegations of the paragraphs
14 above.
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16 103. Pursuant to Labor Code §2699, the foregoing violations of statutes and regulations
17 permit PLAINTIFF to recover civil penalties through this action on behalf of himself and other
18 current and former employees of DEFENDANTS.

19 104. PLAINTIFF has complied with the procedural requirements specified in Labor Code
20 §2699.3.
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22 105. PLAINTIFF has exhausted all administrative procedures required of him, and is justified
23 as a matter of right in bringing forward this cause of action.

24 106. On December 9, 2020, PLAINTIFF, through counsel, pursuant to the PAGA, sent this
25 letter notice of violations, via online submission, to the LWDA, as required by Labor Code
26 §2699.3. A copy of this letter-notice is attached to this Complaint as Exhibit "A".
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1 107. It has been over 65 days since PLAINTIFF submitted his letter-notice of violations to
2 the LWDA, and the LWDA has not provided notice to PLAINTIFF of its intent to investigate
3 the alleged violations detailed herein. Therefore, PLAINTIFF may commence a civil action
4 pursuant to Labor Code §2699.3(B).

5 108. As a result of DEFENDANTS' violations of numerous provisions of the Labor Code,
6 PLAINTIFF seeks all civil penalties, reasonable attorney's fees and costs available pursuant to
7 Labor Code §2699.
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9 109. PLAINTIFF is likely to have evidentiary support, after research and reasonable
10 opportunity for further investigation and discovery, to further penalties and violations.
11 PLAINTIFF will amend this complaint if appropriate and required to seek all applicable
12 penalties for violations which the LWDA has failed to investigate and/or failed to issue a
13 citation.
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15 110. Pursuant to Labor Code §2699(i) and 2699(g)(1), PLAINTIFF, as an aggrieved
16 employee on behalf of himself and other current and former employees of DEFENDANTS,
17 should be awarded twenty-five percent (25%) of all penalties due under California law, interest,
18 attorneys' fees and costs. The LWDA should be awarded seventy-five percent (75%) of the
19 penalties due and awarded.
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21 **NINTH CAUSE OF ACTION**

22 By PLAINTIFF and the Class Against DEFENDANTS

23 (Business and Professions Code § 17200 et seq.)

24 111. PLAINTIFF realleges and incorporate by reference the allegations of the paragraphs
25 above.

26 112. California Business and Professions Code § 17200 et. seq. prohibits acts of unfair
27 competition including any "unlawful and unfair business practices."
28

1 113. The conduct of DEFENDANTS, as alleged herein, has been and continues to be unfair,
2 unlawful, and deleterious to PLAINTIFF and similarly situated current and former employees,
3 and to the general public.

4 114. PLAINTIFF hereby seeks to enforce important rights affecting the public interest within
5 the meaning of Code of Civil Procedure § 1021.5. PLAINTIFF is a “person” within the
6 meaning of Business and Professions Code § 17204 and therefore has standing to bring this suit
7 for injunctive relief and restitution.
8

9 115. The prompt and proper payment of wages is a fundamental public policy of the State of
10 California. It is also the public policy of the State to enforce minimum labor standards ensuring
11 that employees are not required or permitted to work under substandard and unlawful conditions
12 and to protect those employers who comply with the law from losing competitive advantage to
13 other employers that fail to comply with labor standards and requirements.

14 116. Through the conduct alleged herein, DEFENDANTS acted contrary to these public
15 policies and have thus engaged in unlawful and/or unfair business practices in violation of
16 Business and Professions Code §§ 17200 et. seq. depriving PLAINTIFF, and similarly situated
17 current and former employees of DEFENDANTS, the rights, benefits, and privileges guaranteed
18 to employees under California law.
19

20 117. Beginning at an exact date unknown to PLAINTIFF, but at least four years prior to the
21 filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent
22 business acts and practices as defined by Cal. Business & Professions Code § 17200, by
23 engaging in the following:
24

25 118. Failing to pay all hours worked;

26 119. Failing to pay all overtime hours worked;
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28

1 120. Failing and refusing to authorize and permit proper meal periods to PLAINTIFF and
2 similarly situated current and former employees of DEFENDANTS;

3 121. Failing to pay all accrued meal periods compensation to PLAINTIFF and similarly
4 situated current and former employees of DEFENDANTS;

5 122. Failing and refusing to authorize and permit proper rest breaks to PLAINTIFF and
6 similarly situated current and former employees of DEFENDANTS;

7 123. Failing to pay all accrued rest break compensation to PLAINTIFF and similarly situated
8 current and former employees of DEFENDANTS;

9 124. Failing to reimburse PLAINTIFF and similarly situated current and former employees of
10 DEFENDANTS for business-related expenses;

11 125. Failing to provide accurate itemized wage statements to PLAINTIFF and similarly
12 situated current and former employees of DEFENDANTS; and

13 126. Failing to pay all wages owed to PLAINTIFF, and other separated employees of
14 DEFENDANTS, at the end of their employment.

15 127. By engaging in these business practices, which are unfair and unlawful within the
16 meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harmed
17 PLAINTIFF, similarly situated current and former employees of DEFENDANTS, and the
18 general public, and have gained an unfair competitive edge.

19 128. Under Business and Professions Code § 17203, PLAINTIFF is entitled to obtain
20 restitution on behalf of himself and others similarly affected by the unfair and/or unlawful
21 business practices as set forth herein.

22 129. Pursuant to Business and Professions Code § 17202, PLAINTIFF is entitled to specific
23 relief enforcing the penalty provisions of various Labor Code sections for himself and for
24 members of the general public in amounts to be proven at trial. Failure to enforce the penalties
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1 due would result in the unlawful enrichment of DEFENDANTS and would promote unfair
2 competition.

3 130. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to
4 prevent DEFENDANTS from continuing to engage in the unfair business practices as alleged
5 herein.

6 131. PLAINTIFF alleges, on information and belief, that DEFENDANTS, and persons acting
7 in concert with them, have committed and will continue to commit the above-described
8 unlawful and/or unfair acts unless restrained or enjoined by this Court. Unless the relief prayed
9 for below is granted, a multiplicity of actions will result. PLAINTIFF and other interested
10 persons have no plain, speedy, or adequate remedy at law, in that pecuniary compensation alone
11 would not afford adequate and complete relief. The above-described acts will cause great and
12 irreparable damage to PLAINTIFF and other interested persons unless DEFENDANTS are
13 restrained from committing further illegal acts.
14

15 132. PLAINTIFF'S success in this action will result in the enforcement of important rights
16 affecting the public and will confer a significant benefit upon the general public. Private
17 enforcement of the rights enumerated in this Complaint are necessary, as public agencies have
18 only sought limited enforcement of those rights, if any. The named PLAINTIFF individually,
19 and by and through counsel, is incurring a financial burden in pursuing this action on behalf of
20 the general public. PLAINTIFF seeks to enjoin the above-referenced unlawful actions under
21 California's Labor Code and Wage Order 16. Therefore, PLAINTIFF seeks an award of
22 attorneys' fees and costs of suit on this action pursuant to California Code of Civil Procedure §
23 1021.5 and other applicable laws.
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VII. PRAYER

WHEREFORE, PLAINTIFF on his own behalf and on the behalf of the members of the class, prays for judgment as follows:

1. For an order certifying the proposed class;
2. Compensatory and consequential damages;
3. Statutory damages;
4. Prejudgment interest pursuant to Labor Code § 218.6 accrued on all due and unpaid wages from the date that wages were due and payable, according to proof;
5. Pursuant to Wage Order 16, and Labor Code §§ 204, 510, and 1194(a), an award in the amount of unpaid wages, owed by DEFENDANTS for the four years preceding the filing of this complaint, plus interest;
6. Compensation of one hour at the regular rate of pay for each rest period and meal period denied in violation of Labor Code §§ 226.7, 512 and Wage Order 16, according to proof;
7. Waiting time penalties pursuant to Labor Code §§ 201-203;
8. Reimbursement of business-related expenses pursuant to Labor Code § 2802;
9. Civil penalties pursuant to Labor Code § 2699 et seq.;
10. Attorneys' fees and costs made payable to the Liberation Law Group, P.C., pursuant to Cal. Civ. Proc. Code § 1021.5, Cal. Labor Code §§ 218.5, 226(e), 1194, 2699(g)(1), 2802, and other applicable laws;
11. Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly amounts earned or retained DEFENDANTS by virtue of their engaging in unlawful conduct, according to proof; and
12. Such other and further relief as the Court deems just and proper.

1 Dated: May 7, 2021

LIBERATION LAW GROUP, P.C.

2
3 By: _____

Ernesto Sanchez
Attorneys for PLAINTIFF

4
5
6 **VIII. DEMAND FOR JURY TRIAL**

7 PLAINTIFF hereby demands a trial by jury.

8
9 DATED: May 7, 2021

LIBERATION LAW GROUP, P.C.

10
11 By: _____

Ernesto Sanchez
Attorneys for PLAINTIFF

Exhibit A

Attorneys:

Arlo García Uriarte
Un Kei Wu
Ernesto Sánchez
Daniel P. Iannitelli
Jonathan Rebong
Nick Aguilar, Adm. in Fla.
Sandra Beltran
Elizabeth Lyons

**Legal Assistants:**

Andrea Ortiz
Lorenzo Barrera Cruz
Ivette Olguin
Vicent Uriarte
Crystina Arreola-Nunez
Mariana Segarra
Luiseth Contreras
Alejandro Quiros

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

December 9, 2020

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail

Bay Mountain Air, Inc.
Attn: Todd Stone, Agent for Service of Process
88 Dillon Avenue
Campbell, CA 95008

Re: Mr. Carlos Lopez, on behalf of himself and all similarly situated Bay Mountain Air, Inc. employees in California, as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Mr. Carlos Lopez ("Plaintiff") submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Bay Mountain Air, Inc. ("Defendant"). Plaintiff seeks to represent himself and other aggrieved employees in a Private Attorneys General Act ("PAGA") action against Defendant. [Labor Code §§ 2698, *et seq.*] For purpose of this notice, "similarly aggrieved employees" includes all of Defendant's current and former non-exempt employees in California.

I. Factual Statement

On or about November 10, 2019, Plaintiff was hired by Defendant as an installer of air conditioners. Plaintiff worked for Defendant until approximately September 18, 2020.

On average, Plaintiff and similarly aggrieved employees worked five (5) days per week for Defendant.

Defendant paid Plaintiff and similarly aggrieved employees on a weekly basis.

A. Labor Code §§ 510, 1194 and Wage Order 16 (Unpaid Wages, Overtime, Off-the-Clock, and Minimum Wage Violations)

Labor Code sections 510 and 1194, and Industrial Welfare Commission Wage Order ("Wage Order") 16 require employers to pay at least minimum wages for all hours

worked and overtime wages for hours worked over eight (8) hours per day or forty (40) hours per week.

Plaintiff and similarly aggrieved employees were regularly scheduled to work eight (8) hour shifts. However, Plaintiff and similarly aggrieved employees regularly worked over eight (8) hours per day or forty (40) hours per week and were not compensated for this time. Defendant failed to properly compensate Plaintiff and similarly aggrieved employees for pre- and post- shift off-the-clock hours worked, including overtime off-the-clock hours worked. On average, Plaintiff and similarly aggrieved employees worked several minutes before their scheduled start time and several minutes after their scheduled end time per day. Off-the-clock work performed included, but is not limited to, gathering tools and materials, cleaning the job site, filling out forms, receiving work instruction, and putting on work tools and personal protective equipment ("PPE"). The off-the-clock hours worked by Plaintiff and similarly aggrieved employees pre- and post- shift increased as a result of procedures related to COVID-19.

Plaintiff and similarly aggrieved employees were frequently required to drive long distances to their respective job sites. Defendant did not compensate Plaintiff and similarly aggrieved employees for travel time when required to drive long distances to their respective job sites.

Plaintiff has knowledge of similarly aggrieved employee who went to Defendant's warehouse in order to carpool to their respective job sites but were not compensated for time spent carpooling with Defendant.

For approximately two (2) weeks, Plaintiff carpooled to his respective job site with Defendant. Defendant picked up Plaintiff at his residence. Defendant did not compensate Plaintiff and similarly aggrieved employees for time spent carpooling with Defendant to their respective job sites.

Defendant has violated the following civil penalty provisions: Labor Code Sections 558, 1197.1, 2699(f) and Wage Order 16, Section 18. Please note that other civil penalty provisions may additionally apply.

Labor Code §§ 226.7, 512 and Wage Order 16 (Meal and Rest Periods and Premium Wages)

Defendants must authorize and permit employees "10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours." [*Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004,1029 (2012)]. Defendants are also required to provide employees a 30-minute, uninterrupted meal period "after no more than five hours of work," and "a second meal period after no more than 10 hours work." [*Id.* at 1049]. If rest or meal breaks are late, missed, or too short, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). [Labor Code § 226.7; Wage Order 16]. Here, Defendant failed to authorize and permit Plaintiff and similarly aggrieved employees proper meal and rest periods.

Defendant failed to authorize and provide Plaintiff and similarly aggrieved employees with all uninterrupted thirty (30) minute meal periods for every five (5) hours worked that they were entitled to receive.

Defendant had a policy and practice of automatically deducting thirty (30) minutes from the hours worked by Plaintiff and similarly aggrieved employees regardless of whether they took a full thirty (30) minute meal period or not.

Defendant had a policy and practice of combining a thirty (30) minute meal break and two (2) ten (10) minute rest breaks for Plaintiff and similarly aggrieved employees per day. Defendant's failure to stagger the meal and rest breaks of Plaintiff and similarly aggrieved employees was not in accord with California law and resulted in unlawful meal and rest breaks.

Premium wages were not paid to Plaintiff and similarly aggrieved employees for non-compliant meal periods and rest breaks.

Defendant has violated the following civil penalty provisions: Labor Code Section, 2699(f) and Wage Order 16, Section 18. Please note that other civil penalty provisions may additionally apply.

Labor Code § 2802 (Reimbursement of Business Expenditures)

Labor Code section 2802 requires employers to indemnify employees for necessary expenditures incurred by them in direct consequence of the discharge of their duties business expenditures. Here, Defendant failed to reimburse Plaintiff and similarly aggrieved employees for work-related expenses.

Defendant had a policy and practice of providing Plaintiff and similarly aggrieved employees with work instructions and information regarding their work schedules and job assignments on their personal cell phones by way of phone call or text message. Defendant did not reimburse Plaintiff and similarly aggrieved employees for expenditures associated with the use of their personal cell phones for work-related purposes.

Defendant had a policy and practice of not reimbursing Plaintiff and similarly aggrieved employees for tools and equipment that they purchased to perform their work duties. This includes, but is not limited to, drills, gloves, hammers, belts, utility knives, screwdrivers, and other items.

Defendant had a policy and practice of not reimbursing Plaintiff and similarly aggrieved employees for expenses associated with the use of their personal vehicles for work-related purposes, including traveling to their respective job sites and reimbursement of parking tickets.

Defendant has violated the following civil penalty provisions: Labor Code Section 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, “total hours worked by the employee” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” [Cal. Labor Code § 226(a)(2)(9)] Wage Order 16, Section Here, Defendant failed to do this because its policies forced Plaintiff and similarly aggrieved employees to work off-the-clock. Defendant failed to keep proper timekeeping records and failed to provide Plaintiff’s and similarly aggrieved employees with accurate accounting of actual hours worked, with corresponding correct wage rates.

Defendant has violated the following civil penalty provisions: Labor Code Sections 226.3 and 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. [Cal. Labor Code § 201] If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days until paid. As a result of its failure to pay all wages earned, Defendant failed to pay all final wages due to Plaintiff and other separated similarly aggrieved employees, and has violated Sections 201-203.

Defendant has violated the following civil penalty provisions: Labor Code Section 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code § 1174 and Wage Order 16 (Payroll Records)

Labor Code section 1174 requires employers to keep “payroll records showing the hours worked daily by and the wages paid to the employee.” An employer may be liable under Section 1174 if it fails to record when employees report to work, the start and end time of their shifts, and the total hours worked or meal periods. [See *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp.2d 1040, 1044 (2011)]. Wage Order 16, Section 6, requires employers to keep accurate information regarding employee shift beginning and end times, meal periods, total daily hours worked, total hours worked during the pay period and applicable rates of pay, and total wages paid each pay period, among other items. [Wage Order 15, Section 6(A)-(C)]. Because its policies forced Plaintiff and similarly aggrieved employees to work off-the-clock, Defendants did not keep the required records showing hours worked. Defendant failed to keep proper timekeeping records and failed to provide Plaintiff’s and similarly aggrieved employees with accurate accounting of actual hours worked, with corresponding correct wage rates.

Defendant has violated the following civil penalty provisions: Labor Code Sections 1174.5, 2699(f) and Wage Order 16, Section 18. Please note that other civil penalty provisions may additionally apply.

Very truly yours,
LIBERATION LAW GROUP, P.C.

A handwritten signature in black ink, appearing to be 'Arlo Uriarte', with a stylized, flowing script.

Arlo Uriarte, Esq.