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10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN JOAQUIN**

12 RAUL RODRIGUEZ CORONADO,
13 individually and on behalf of all other
14 similarly situated employees,

15 Plaintiff,

16 vs.

17 MGD, INC., a California Corporation; and
18 DOES 1 to 100, inclusive,

19 Defendants.

Case No. STK-CV-UOE-2021-893

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Wage Statement Violations
2. Waiting Time Penalties
3. Unfair Competition
4. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff RAUL RODRIGUEZ CORONADO ("Plaintiff"), on behalf of himself and all other
2 similarly situated employees, hereby files this Complaint against Defendants MGD, INC., a
3 California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 "Defendants"). On information and belief, Plaintiff allege the following:

5 INTRODUCTION

6 1. This is a class action and representative Private Attorneys General Act action brought by
7 Plaintiff for, failure to provide accurate wage statements, failure to pay all wages due upon termination,
8 unfair competition, and statutory and civil penalties for violations of the California Labor Code.

9 JURISDICTION AND VENUE

10 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
11 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
12 Labor Code, California Business and Professions Code, and Wage Order No. 5.

13 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
14 Defendants reside in San Joaquin County and/or are foreign entities and have not designated any county
15 in California as being where they maintain their principal offices. In addition, some of the wrongful acts
16 and violations of law asserted herein occurred within San Joaquin County, and Defendants' obligation to
17 pay wages arose in San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36
18 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
20 claims set forth in this Complaint against Defendants as Private Attorney Generals on behalf of himself
21 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
22 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
23 approximately January 28, 2021. Plaintiff provided facts and legal bases for the claims within the notice
24 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
25 Plaintiff submitted the \$75.00 filing fee. The January 28, 2021 notice was also sent via certified mail to
26 Defendants on the same day. Plaintiff is informed and believes, that, to date, the LWDA has not
27 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
28 believes that he has exhausted all administrative remedied pursuant to the Private Attorneys General Act

1 and may bring this action on behalf of himself and all similarly situated employees. See Cal. Labor
2 Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385
3 n.19 (2005).

4 **PARTIES**

5 5. RAUL RODRIGUEZ CORONADO is an individual over the age of eighteen (18) and
6 is a resident of the State of California.

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

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

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

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

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

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

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CLASS ALLEGATIONS

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

all individuals who have, or continue to, work for Defendants in California as non-exempt employees from February 1, 2017 to the present.

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

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

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

- (1) Whether Defendants had a policy and practice to incorporate the value of all nondiscretionary remuneration, including bonuses, into Plaintiff's and putative class members' regular rate of pay;
- (2) Whether Defendants had a policy and practice to pay Plaintiff and putative class members paid sick leave at the regular rate of pay;
- (3) Whether as a result of Defendants' policies and practices Plaintiff and putative class members received all wages, due and owing, at the time of their termination or separation; and

(4) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who did not receive all wages owed to them as a result of Defendants' failure to incorporate the value of nondiscretionary remuneration, such as bonuses, into their regular rates of pay resulting in a failure to timely pay all wages owed upon separation or termination. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

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

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by

1 addressing the matter as a class action. The cost to the court system of adjudication of
2 such individualized litigation would be substantial. Individualized litigation would also
3 present the potential for inconsistent or contradictory judgments.

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

6 **GENERAL ALLEGATIONS**

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

9 16. Plaintiff worked for Defendants as a non-exempt employee from approximately June 9,
10 2006 to October 27, 2020. Similarly situated employees also worked for Defendants as non-exempt
11 employees.

12 17. Plaintiff and similarly situated employees had paid sick leave available to them under the
13 Healthy Workplaces Healthy Families Act of 2014. Plaintiff and similarly situated employees took sick
14 days and used the paid sick leave available to them. Plaintiff and similarly situated employees also
15 earned nondiscretionary remuneration, such as bonuses, from Defendants. During those instances where
16 Defendants paid Plaintiff nondiscretionary remuneration, such as bonuses, and Plaintiff and similarly
17 situated employees used paid sick leave, Defendants failed to pay the sick leave at the correct regular
18 rate of pay. Defendants failed to incorporate the value of nondiscretionary remuneration, such as
19 bonuses, into Plaintiff's and similarly situated employees' regular rates of pay for the purpose of paying
20 paid sick leave. As a result, Plaintiff and similarly situated employees were not paid all wages owed to
21 them. For example, Plaintiff was paid an hourly rate of \$21.50 per hour. From 9/28/20 to 10/11/20
22 Plaintiff earned nondiscretionary remuneration in the form of a bonus in the amount of \$85.00 and used
23 three (3) hours of paid sick leave. Defendants paid Plaintiff his paid sick leave at the rate of \$21.50
24 rather than his regular rate of pay, which would have incorporated the value of the bonus paid to him.
25 As a result, Plaintiff was not paid all wages owed to him during that pay period.

26 18. At the time of Plaintiff's and similarly situated employees' separation or termination they
27 had wages due and owing to them. To date, Defendants have not paid these wages to Plaintiff and
28 similarly situated employees.

19. Defendants failed to provide Plaintiff and similarly situated employees with legally compliant wage statements. The wage statements Defendants issued to Plaintiff and similarly situated employees did not state the correct amount of gross and net wages earned and all applicable hourly rates in effect.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

20. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 19 as though fully set forth herein.

21. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, 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 the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

22. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period and gross and net wages

1 earned. Plaintiff and similarly situated employees suffered confusion over whether they received all
2 wages owed and were prevented from effectively challenging information on their wage statements.

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

6 **SECOND CAUSE OF ACTION**
7 **WAITING TIME PENALTIES**
8 **(As to all Defendants)**

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

11 25. An employer must pay an employee who is terminated all unpaid wages immediately
12 upon termination. *See* Cal. Lab. Code § 201.

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

15 27. Plaintiff and similarly situated employees did not receive all wages, including all sick
16 leave pay owed at their termination or within the required time after their separation from employment.

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

20 29. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
21 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
22 and similarly situated employees earned paid sick leave and bonuses from their own records but failed to
23 compensate paid sick leave at Plaintiff's and similarly situated employees' regular rate of pay. Such
24 conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet
25 Defendants still refused to pay the remaining wages owed.

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

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THIRD CAUSE OF ACTION
UNFAIR COMPETITION
(As to MGD, INC. and DOES 1 to 100)

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

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

33. Plaintiff and similarly situated employees were not paid all wages owed, including paid sick leave and accrued but unused vacation wages during their employment or any time thereafter.

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

35. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 246 and 227.3 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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

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

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

- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

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

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

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
 - b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);
3. As to the Fourth Cause of Action:
 - a. For civil penalties as provided for in the Labor Code for each enumerated violation;
 - b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
 - c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

1 d. For any other remedies as allowed by law and/or deemed appropriate by the
2 Court;

3 4. For such other and further relief as this Court may deem just and proper,
4 including, but not limited to:

- 5 a. Wages as proved at trial;
6 b. Injunctive and Declaratory relief;
7 c. Attorney's fees and costs as provided for by law; and
8 d. Interest.

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10 Dated: April 7, 2021

Shimoda Law Corp.

11
12 By: 

13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Brittany V. Berzin
16 Attorneys for Plaintiff
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