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**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

RAYMUNDO HERNANDEZ MARTINEZ,
an individual,

Plaintiff,

vs.

LITTLE BEACH HOUSE MALIBU, LLC, a
Delaware limited liability company; SOHO
HOUSE WEST HOLLYWOOD LLC, a
Delaware limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **21STCV12279**

COMPLAINT FOR DAMAGES

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1182.12, 1194, 1194.2);**
- 2. FAILURE TO PAY OVERTIME WAGES (CAL. LABOR CODE §§ 510 AND 1194)**
- 3. FAILURE TO PROVIDE ALL REQUIRED INFORMATION UPON HIRING (CAL. LABOR CODE § 2810.5)**
- 4. FAILURE TO PROVIDE PAID SICK DAYS (CAL. LABOR CODE §§ 245.5 - 249**
- 5. FAILURE TO PROVIDE MEAL AND REST PERIODS (LAB. CODE §§226.7, 512);**
- 6. FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS (CAL. LABOR CODE §§226(a), 226.3 AND 1174(d));**
- 7. FAILURE TO INDEMNIFY (CAL. LABOR CODE §2802);**
- 8. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 9. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §17200 ET SEQ.;**
- 10. PRIVATE ATTORNEY GENERAL ACT OF 2004; AND**

**11. FAILURE TO PERMIT INSPECTION
OF PERSONNEL AND PAYROLL
RECORDS (CAL. LABOR CODE
§§1198.5, 226(c)(f), and 432).**

[DEMAND FOR JURY TRIAL]

INTRODUCTION

1. Plaintiff Raymundo Hernandez Martinez (“Plaintiff”) brings this action against Defendant LITTLE BEACH HOUSE MALIBU, LLC, SOHO HOUSE WEST HOLLYWOOD LLC, and DOES 1 through 50 inclusive (referred herein collectively as “Defendants”) for alleged violations of California’s Labor Code and Private Attorney General Act of 2004 (“PAGA”).

2. Plaintiff alleges that Defendants have violated the California Labor Code by failing to (1) pay Plaintiff and similarly situated aggrieved employees all wages they are due, (2) provide overtime premiums, (3) provide legally compliant meal and rest breaks, (4) provide all required information upon hiring, (5) furnish accurate itemized wage statements, (6) pay all wages owed to Plaintiff and similarly situated aggrieved employees when they quit or were terminated, (7) provide paid sick leave, and (8) reimburse for necessary business expenses.

3. Plaintiff seeks to recover penalties for the Labor and Workforce Development Agency (“LWDA”), himself and other similarly aggrieved employees under PAGA as a result of Defendants’ systematic violation of the law.

JURISDICTION

4. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants’ obligations and liability arise therein, because Defendants maintain locations and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

5. Plaintiff RAYMUNDO HERNANDEZ MARTINEZ at all times relevant to this action, resided in the County of Los Angeles, California.

1 6. Plaintiff is informed and believes, and based thereupon alleges, that Defendants LITTLE
2 BEACH HOUSE MALIBU, LLC and SOHO HOUSE WEST HOLLYWOOD LLC operate their
3 businesses in Los Angeles County and committed their PAGA violations in Los Angeles County.

4 7. Plaintiff is informed and believes, and based thereupon alleges, that Defendants LITTLE
5 BEACH HOUSE MALIBU, LLC and SOHO HOUSE WEST HOLLYWOOD LLC were Plaintiff's
6 employer within the meaning of the Labor Code and Industrial Welfare Commission Order No. 5-2001.

7 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
8 the Defendants named herein as DOES 1 through 50, inclusive, are unknown to Plaintiff at this time and
9 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
10 Complaint to insert the true names and capacities of said Defendants when the same become known to
11 Plaintiff. Plaintiff is informed and believes, and based thereupon allege, that each of the fictitiously-
12 named Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff
13 as alleged hereinafter.

14 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
15 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
16 coconspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the other
17 Defendants, and each of them, and in doing the things alleged herein, were acting at least in part within
18 the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, and/or
19 joint venture and with the permission and consent of each of the other Defendants.

20 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
21 of them, including those Defendants named as DOES 1 through 50, acted in concert with one another to
22 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one
23 another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to
24 Government Code §12940(i). Plaintiff is further informed and believes, and based thereupon alleges,
25 that Defendants, and each of them, formed and executed a conspiracy or common plan pursuant to
26 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part
27 of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

1 11. Whenever and wherever reference is made in this Complaint to any act or failure to act
2 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
3 and/or failures to act by each Defendant acting individually, jointly and severally.

4
5 **ALTER EGO, AGENCY AND JOINT EMPLOYER**

6 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
7 of interest and ownership between Defendants and DOES 1 through 50 that the individuality and
8 separateness of Defendants have ceased to exist.

9 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
10 purported corporate existence, Defendants and DOES 1 through 50 are, in reality, one and the same,
11 including, but not limited to because:

12 a. Defendants are completely dominated and controlled by each other Defendant
13 and DOES 1 through 50, who personally committed the frauds and violated the laws as set forth in
14 this complaint, and who have hidden and currently hide behind Defendants to perpetrate frauds,
15 circumvent statutes, or accomplish some other wrongful or inequitable purpose.

16 b. DOES 1 through 50 and each other Defendant derive actual and significant
17 monetary benefits by and through Defendants' unlawful conduct, and by using Defendants as the
18 funding source for their own personal expenditures.

19 c. Plaintiff is informed and believes, and based thereon alleges Defendants and
20 DOES 1 through 50, while really one and the same, were segregated to appear as though separate and
21 distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other
22 wrongful or inequitable purpose.

23 d. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 and DOES 1 through 50 do not comply with all requisite corporate formalities to maintain a legal and
25 separate corporate existence.

26 e. Plaintiff is informed and believes, and based thereon alleges, that the business
27 affairs of Defendants and DOES 1 through 50 are, and at all times relevant were, so mixed and
28 intermingled that the same cannot reasonably be segregated, and the same are in inextricable

1 confusion. Defendants are, and at all times relevant hereto were, used by DOES 1 through 50 as a
2 mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the alter
3 ego of DOES 1 through 50. The recognition of the separate existence of Defendants and DOES 1
4 through 50 from one another would not promote justice, in that it would permit Defendants to insulate
5 themselves from liability to Plaintiff for violations of the Government Code, Labor Code, and other
6 statutory violations. The corporate existence of Defendants and DOES 1 through 50 should be
7 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
8 and injustice to Plaintiff herein.

9 14. Accordingly, Defendants and DOES 1 through 50 constitute the alter egos of one another,
10 and the fiction of their separate corporate existence must be disregarded.

11 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
12 thereon alleges that Defendants and DOES 1 through 50 are Plaintiff's joint employers by virtue of a
13 joint enterprise, and that Plaintiff was an employee of Defendants and DOES 1 through 50. Plaintiff
14 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
15 and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the
16 manner in which Defendants' business was and is conducted.

17 FACTUAL ALLEGATIONS

18
19 16. On or about April 2016, Plaintiff was hired by Defendants as a full-time non-exempt
20 cook. At hire, Defendants failed to provide Plaintiff written notice that provided his rates of pay, regular
21 paydays designated by the employer, the name, address, and telephone number of the employer's
22 workers' compensation insurance carrier, and the name, address and telephone number of the
23 employer's main office or principal place of business.

24 17. Plaintiff witnessed that the policies and practices at each of Defendants locations were
25 the same regardless of the location at which he worked. Further, Defendants' uniform policy and
26 practice documents provide additional evidence that Defendants operated their facilities in California
27 pursuant to uniform policies and practices.

1 18. Plaintiff and the aggrieved employees are, and at all times pertinent hereto have been,
2 Defendants' non-exempt, employees who worked at Defendants' locations in California, within the
3 meaning of California Labor code § 500, *et seq.*, and the rules and regulations of the California IWC
4 Wage Orders.

5 19. Defendants have a policy and practice of not compensating Plaintiff and aggrieved
6 employees personal cell phone usage and personal vehicle usage for Defendant's business purposes.
7 Specifically, they had to take work-related phone calls and messages on their personal phones and use
8 their personal cars to drive between job sites while on duty. Further, aggrieved employees never were
9 fully reimbursed for all the work-related phone calls, messages, and mileage. They used their personal
10 phones and vehicles as part of their duties multiple times per week, but they were not compensated for
11 those messages, phone calls, and car mileage.

12 20. California Labor Code section 246 requires that employers in California provide
13 employees who have worked for thirty (30) days or more with paid sick days. Defendants did not
14 provide any sick days to Mr. Hernandez-Martinez and the aggrieved employees and otherwise prevented
15 them from taking sick days. The aggrieved employees that are still working for Defendants continue to
16 be denied sick days and continue to be prevented from taking sick days.

17 21. Further, Defendants failed to pay overtime to Plaintiff and the aggrieved employees when
18 they worked over eight hours or over forty hours per week.

19 22. Plaintiff and the aggrieved employees were denied meal breaks required under California
20 Labor Code §§ 226.7 and 512. Specifically, Plaintiff and the aggrieved employees were unable to take a
21 30-minute, uninterrupted meal break due to Defendants' policies and practices of forcing Plaintiff and
22 the employees to perform work by not relieving them of their duty. In addition, the timing of meal
23 breaks also violated California law when the breaks started too late.

24 23. Further, Plaintiff and the aggrieved employees were denied rest breaks required under
25 California Labor Code §§ 226.7 and 512. Specifically, Plaintiff and the aggrieved employees were
26 unable to take a two 10-minute, uninterrupted rest breaks due to Defendants' policies and practices of
27 forcing Plaintiff and the aggrieved employees to perform work by not relieving them of their duty.

1 Plaintiff and the aggrieved employees were denied a third rest break when they worked shifts over 10
2 hours.

3 24. Further, Defendants engaged in a systematic, company-wide policy of not paying meal
4 and rest period premiums owed when compliant meal and rest breaks were not provided. Because of
5 this policy and practice, Plaintiff and the aggrieved employees did not receive premium pay for all
6 missed, interrupted, late, and/or shortened meal and rest breaks.

7 25. As a result of not paying Plaintiff and the aggrieved employees for all hours worked and
8 the meal and rest break premium payments owed due to missed breaks, Plaintiff and the aggrieved
9 employees are still owed wages and penalties. With respect to all former employees, Defendants have
10 failed to timely pay wages due to those aggrieved employees in violation of the California Labor Code
11 §§ 201 and 202.

12 26. Further, Defendants have failed to issue Plaintiff and the aggrieved employees accurate
13 itemized wage statements in violation of California Labor Code § 226(a), 226.3 and 1174(d).

14 27. From on or about March 31, 2017 to on or about January 26, 2020, Plaintiff worked at
15 least five days a week, for a total of approximately 50.5 hours per week.

16 28. From on or about April 1, 2017 to on or about April 30, 2019, Plaintiff was paid at a rate
17 of \$19.00 per hour.

18 29. From on or about May 1, 2019 to on or about January 26, 2020, Plaintiff was paid at a
19 rate of \$22.00.

20 30. From on or about March 31, 2017 onward Plaintiff was not permitted to take his statutory
21 30-minute meal periods in a legal manner for days on which Plaintiff worked at least 5 hours.

22 31. From on or about March 31, 2017 to on or about January 26, 2020, Plaintiff was not
23 permitted to take his statutory 10-minute rest breaks in a legal manner for every four hours worked, or
24 majority portion thereof.

25 32. From on or about March 31, 2017 to on or about January 26, 2020, Plaintiff was required
26 to utilize his motor vehicle and personal phone for the performance of his duties without reimbursement
27 of his costs.

33. On or about January 26, 2020, Plaintiff's employment with Defendants ended. At no time since the separation of his employment has Plaintiff been paid all outstanding wages owing him.

34. On February 11, 2020, Plaintiff made a written request to inspect or receive a copy of his personnel and payroll records from Defendants, which Defendants received.

35. Defendants failed and refused to permit Plaintiff's inspection of his personnel and payroll records and failed to provide a copy of Plaintiff's personnel and payroll records to him, within the time required by Labor Code §1198.5 and §226(c), or ever.

FIRST CAUSE OF ACTION

FOR FAILURE TO PAY WAGES DUE

AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE

36. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein.

37. Defendant failed to compensate Plaintiff and the aggrieved employees for all hours worked at the proper rates of pay due to its illegal policy and/or practice of failing to compensate Plaintiff and the aggrieved employees for hours worked off the clock as well as by deducting thirty (30) minutes from Plaintiff and the aggrieved employees' hours for a meal break they did not receive, as well as by not compensating for overtime hours at a time and half of Plaintiff and the aggrieved employees' regular rate of pay.

38. IWC Wage Order 5-2001 § 11(a); Cal. Code of Regs. Tit. 8, § 11040(11)(a); *see also* 2002 DLSE Manual § 46.6.1, mandate that meal periods during which workers are not relieved of all duties count as hours worked in calculating time worked in a workday. The time Plaintiff and the aggrieved employees spent performing work functions during meal periods should have been incorporated into hours worked by Plaintiff and the aggrieved employees, but Defendants knowingly, willingly and intentionally refused to include that time in hours worked.

39. In violation of California law, Defendants knowingly and willfully refused to perform its obligations in recording and paying for all working time performed by Plaintiff and the aggrieved employees such that Plaintiff and the aggrieved employees were not compensated for all time worked.

Defendants' conduct was willful, intentional, deliberate and with an improper motive amounting to malice and in conscious disregard for the rights of Plaintiff and the aggrieved employees, thereby entitling Plaintiff and the aggrieved employees to recover nominal, actual, compensatory, and all damages so allowable under California law, in amounts according to proof at time of trial.

40. As a direct and proximate result of the aforementioned violations, Plaintiff and the aggrieved employees were damaged by Defendants in an amount according to proof at time of trial.

41. Wherefore, Plaintiff and the aggrieved employees request relief as hereinafter provided.

42. Defendants' failure to comply with Labor Code § 204 triggers penalties under California Labor Code § 2699(f).

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE

43. Plaintiff and the aggrieved employees re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

44. California Labor Code § 510(a) provides as follows:

Eight hours of labor constitutes a day's work. 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.

45. IWC Wage Order 5 and 8 Cal. Code Regs. § 11040 provide as follows:

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:

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

5 46. California Labor Code § 1194(a) provides as follows:

6 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
7 than the legal minimum wage or the legal overtime compensation applicable to the
8 employee is entitled to recover in a civil action the unpaid balance of the full amount of
9 this minimum wage or overtime compensation, including interest thereon, reasonable
10 attorney's fees, and costs of suit.

11 47. California Labor Code § 200 defines wages as to include "all amounts for labor
12 performed by employees of every description, whether the amount is fixed or ascertained by the
13 standard of time, task, piece, commission basis, or other method of calculation." All such wages are
14 subject to California's overtime requirements, including those set forth above.

15 48. IWC Wage Order 5-2001 § 11(a); Cal. Code of Regs. Tit. 8, § 11040(11)(a); *see also*
16 2002 DLSE Manual § 46.6.1, mandate that meal periods during which workers are not relieved of all
17 duties count as hours worked in calculating time worked in a workday. The time Plaintiff and the
18 aggrieved employees spent performing work functions during meal periods should have been
19 incorporated into hours worked by Plaintiff and the aggrieved employees, but Defendants knowingly,
20 willingly and intentionally refused to include that time in hours worked.

21 49. Further, by failing to compensate for travel time, Defendants further knowingly and
22 willingly refused to pay proper overtime rates for all overtime hours worked.

23 50. Defendants' uniform policy and practice of failing to pay Plaintiff and the aggrieved
24 employees the proper wages owed for all hours worked is unlawful. As a result of this unlawful policy,
25 Plaintiff and the aggrieved employees have worked overtime hours for Defendants without being paid
26 overtime premiums in violation of California law.

27 51. In violation of California law, Defendants knowingly and willfully refused to perform its
28 obligations in recording and paying Plaintiff and the aggrieved employees for overtime hours worked.
Defendants' act in so doing was willful, intentional, deliberate and with an improper motive amounting
to malice and in conscious disregard for the rights of Plaintiff and the aggrieved employees thereby
entitling Plaintiff and the aggrieved employees to recover nominal, actual, compensatory, and all
damages so allowable under California law, in amounts according to proof at time of trial.

52. As a direct and proximate result of the aforementioned violations, Plaintiff and the aggrieved employees have been damaged by Defendants in an amount according to proof at time of trial for unpaid overtime and civil penalties, with interest thereon as well as an award of attorney fees and costs set forth below.

53. Wherefore, Plaintiff and the aggrieved employees request relief as hereinafter provided.

54. Defendants' failure to pay overtime triggers penalties under California Labor Code § 2699(f).

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE EMPLOYEES WITH REQUIRED INFORMATION UPON HIRING
AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE

55. Plaintiff and aggrieved employees re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

56. California Labor Code § 2810.5 states in pertinent part:

(a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any “doing business as” names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

57. Defendants failed to provide Plaintiff and similarly aggrieved employees with any of the required information under Cal. Lab. Code § 2810.5(a)(1).

58. As a proximate result of the aforementioned violations, Plaintiff and the aggrieved employees have been damaged by Defendants in an amount according to proof at time of trial for unpaid civil penalties, with interest thereon as well as an award of attorney fees and costs set forth below.

59. Defendants' failure to comply with Labor Code § 2810.5 triggers penalties under California Labor Code § 2699(f).

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE PAID SICK DAYS

AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE

60. Plaintiff and aggrieved employees repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporate them by reference, and further allege:

61. California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment.

62. Upon information and belief, Defendants systematically failed to provide Plaintiff and aggrieved employees paid sick leave of no less than 24 hours or three (3) days. Plaintiff and aggrieved employees worked in excess of 30 days for Defendants in California and were therefore eligible to receive paid sick leave.

63. Additionally, Defendants failed to correctly list the balance of paid sick leave (or paid time off) benefits available on the Plaintiff's wage statements as required by Labor Code § 246(i).

64. Defendants' ongoing and systematic failure to provide the requisite sick leave benefits to Plaintiff and aggrieved employees failure to provide them with accurate balances of their benefits

1 available, violates California Labor Code section 246. Plaintiff and the aggrieved employees are
2 therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5.

3 65. Wherefore, Plaintiff and the aggrieved employees seek to request relief as described
4 below.

5
6 **FIFTH CAUSE OF ACTION**
7 **FOR FAILURE TO PROVIDE MEAL AND REST PERIODS**
8 **AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE**

9 66. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as
10 though fully set forth herein.

11 67. Labor Code §512 requires employers to provide every employee with an uninterrupted
12 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

13 68. Labor Code §226.7 requires an employer to provide every employee with an
14 uninterrupted rest period of not less than 10 minutes, for every period worked in excess of four hours.

15 69. Plaintiff regularly worked in excess of five hours per day and was thereby entitled to take
16 uninterrupted 30-minute meal periods and 10-minute rest periods on each day of work.

17 70. At all relevant times, Defendants failed and refused to provide Plaintiff with meal and
18 rest periods during his work shifts and failed to compensate Plaintiff for missed meal and rest periods, as
19 required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11050 and
20 Industrial Welfare Commission Order No. 5-2001.

21 71. As alleged herein, Plaintiff is not exempt from the meal and rest breaks requirements of 8
22 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently,
23 Plaintiff is owed one hour of pay at his regular hourly rate, or the requisite minimum wage, whichever is
24 greater, for each day that he was denied such meal and rest periods.

25 72. Plaintiff has been deprived of his rightfully earned compensation for meal and rest breaks
26 as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

27 73. From on or about April 1, 2017 to on or about April 30, 2019, Defendants failed to
28 provide Plaintiff with the statutory meal period for those days on which he worked at least five hours on

1 540 separate days. Consequently, Plaintiff is owed one hour of pay at his normal hourly rate of \$19.00
2 for each day that he was denied such a meal period pursuant to Labor Code §226.7, or \$10,260.00, plus
3 interest therein.

4 74. From on or about April 1, 2017 to on or about April 30, 2019, Plaintiff worked
5 approximately 540 separate days without being permitted to take any 10-minute rest breaks. Therefore,
6 as a direct and proximate result of Defendant's violation of Labor Code § 226.7, Defendant owes
7 Plaintiff \$19.00 for each of the 540 days on which rest periods were missed, totaling \$10,260.00.

8 75. From on or about May 1, 2019 to on or about January 26, 2020, Defendants failed to
9 provide Plaintiff with the statutory meal period for those days on which he worked at least five hours on
10 195 separate days. Consequently, Plaintiff is owed one hour of pay at his normal hourly rate of \$22.00
11 for each day that he was denied such a meal period pursuant to Labor Code §226.7, or \$4,290.00, plus
12 interest therein.

13 76. From on or about May 1, 2019 to on or about January 26, 2020, Plaintiff worked
14 approximately 195 separate days without being permitted to take any 10-minute rest breaks. Therefore,
15 as a direct and proximate result of Defendant's violation of Labor Code § 226.7, Defendant owes
16 Plaintiff \$22.00 for each of the 195 days on which rest periods were missed, totaling \$4,290.00.

17 77. Plaintiff is entitled to recover such amounts in the combined amount of \$29,100.00,
18 pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

19
20 **SIXTH CAUSE OF ACTION**

21 **FOR FAILURE TO FURNISH WAGE AND HOUR STATEMENTS**

22 **AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE**

23 78. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as
24 though fully set forth herein.

25 79. Pursuant to Labor Code §§226(a), 226.3, and 1174(d), employers have a duty to provide
26 their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross
27 wages, total deductions and net wages earned. An employer who violates these code sections is liable to
28 its employees for the greater of actual damages suffered by the employee, or \$50 in civil penalties for

1 the initial pay period in which a violation occurred, and \$100 per employee for each subsequent pay
2 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
3 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage
4 statement at all.

5 80. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
6 wage and hour statements showing gross wages earned, the accurate hourly rates for hours actually
7 worked on wage statements, as well as the number of hours worked at each proper hourly rate. For the
8 majority of the time and as to nearly all of his wages, Defendants knowingly and intentionally, not
9 inadvertently, failed to provide Plaintiff with compliant paystubs.

10 81. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

11 82. This failure has injured Plaintiff, by misrepresenting and depriving him of hour, wage,
12 and earnings information to which he is entitled, causing his difficulty and expense in attempting to
13 reconstruct time and pay records, causing his not to be paid wages he is entitled to, causing him to be
14 unable to rely on earnings statements in dealings with third parties, eviscerating his right under Labor
15 Code §226(b) to review itemized wage statement information by inspecting the employer's underlying
16 records, and deceiving him regarding his entitlement to owed wages.

17 83. From on or about March 31, 2017 to on or about January 26, 2020, Plaintiff was paid
18 weekly, and therefore Defendants violated Labor Code §226 approximately 147 times during this time
19 period. Consequently, Defendants are liable to Plaintiff for \$4,000.00, the statutory maximum, in
20 damages for his injuries.

21 84. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
22 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and
23 other applicable provisions, as well as attorneys' fees and costs.

1 **SECOND CAUSE OF ACTION**

2 **FOR FAILURE TO INDEMNIFY**

3 **AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE**

4 85. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as
5 though fully set forth herein.

6 86. Labor Code §2802 requires employers to indemnify its employees for all necessary
7 expenditures or losses incurred by the employee in direct consequence of the discharge of his duties, or
8 of his obedience to the directions of the employer.

9 87. At all times relevant in this action, Plaintiff was required by Defendants to utilize his
10 motor vehicle to drive between jobsites while on duty. Additionally, Plaintiff was required to use his
11 personal phone for work-related phone calls and messages.

12 88. At no point during Plaintiff's employment did Defendants reimburse or indemnify
13 Plaintiff for costs arising from these job necessities.

14 89. As a direct and proximate cause of Defendant's failure to indemnify, Plaintiff has
15 suffered money damages in an amount to be determined at trial. Plaintiff is entitled to recover such
16 amount, plus interest thereon, attorneys' fees, and costs.

17 **THIRD CAUSE OF ACTION**

18 **FOR WAITING TIME PENALTIES**

19 **AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE**

20 90. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as
21 though fully set forth herein.

22 91. At all relevant times, Defendants failed to pay all the Plaintiff's accrued wages and other
23 compensation due immediately upon termination or within seventy-two hours of resignation, as
24 required. These wages refer to, at a minimum, unpaid meal and rest period compensation that
25 Defendants should have paid but did not pay to Plaintiff during the term of his employment and which
26 were, at the latest, due within the time restraints of Labor Code §§201-203.
27
28

1 92. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
2 203.

3 93. As a direct and proximate result of Defendants' willful failure to pay these wages,
4 Plaintiff is entitled to payment of his, at a minimum, unpaid meal and rest period compensation as
5 previously pleaded herein, and more than \$5,242.03 in wait time penalties, calculated based on 30 days
6 of Plaintiff's normal hourly rate of \$22.00 per hour, including overtime (i.e., \$5,242.03 per week, times
7 52 weeks, divided by 365 days, multiplied by 30 days).

8 94. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory
9 penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys' fees and
10 costs.

11
12 **FOURTH CAUSE OF ACTION**
13 **FOR UNFAIR COMPETITION**
14 **AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE**

15 95. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as
16 though fully set forth herein.

17 96. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare Commission
18 Order No. 5-2001, Labor Code §§201, 203, 226, 512, and other applicable provisions, as alleged herein,
19 including Defendants' failure and refusal to pay wages, Defendants' failure to provide meal and rest
20 breaks; Defendants' failure to provide timely and accurate wage and hour statements, Defendants'
21 failure to pay compensation due in a timely manner upon termination or resignation, and Defendants'
22 failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business
23 practices in violation of Business & Professions Code §§17200, et seq.

24 97. As a result of Defendants' unfair business practices, Defendants have reaped unfair
25 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
26 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

98. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the other monies and benefits unlawfully withheld from him.

TENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT
AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE

99. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein.

100. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

101. Plaintiff was an aggrieved employee within the meaning of Labor Code §2699(a), as Defendants committed multiple California Labor Code violations against him, as previously pleaded in this Complaint.

102. On January 25, 2021, more than 65 calendar days before filing this Complaint, Plaintiff gave written notice by online filing with the Labor and Workforce Development Agency and provided notice via certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3.

103. As of the filing of this complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

104. Defendants' policies and practices have resulted in violations of the California Labor Code for failing to pay their employees any wages, let alone the minimum wage, for all hours worked. This subjects Defendants to civil penalties under California Labor Code § 2699(f).

Count I- Failure to Compensate for All Hours Worked

1 105. Defendants have a pattern and practice of failing to pay Plaintiff and the aggrieved
2 employees the meal and rest period premiums when meal and rest periods were not provided in violation
3 of Cal. Lab. Code §§ 226.7 and 512.

4 106. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

5 Count II – Failure to Provide All Required Information on Hire

6 107. Defendants do not provide Plaintiff and the aggrieved employees with written notice that
7 provided their rates of pay, regular paydays designated by the employer, the name, address, and
8 telephone number of the employer’s workers’ compensation insurance carrier, and the name, address
9 and telephone number of the employer’s main office or principal place of business in violation of Cal.
10 Lab. Code §§ 2810.5.

11 108. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

12 Count III – Failure to Provide Paid Sick Days

13 109. Defendants did not provide Plaintiff and the aggrieved employees who have worked for
14 thirty (30) days or more with any paid sick days in violation of Cal. Lab. Code §§246.

15 110. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

16 Count IV – Failure to Offer Meal and Rest Breaks

17 111. Defendants do not provide Plaintiff and the aggrieved employees with any meal or rest
18 breaks, let alone legally compliant breaks in violation of Cal. Lab. Code §§ 226.7 and 512.

19 112. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

20 Count V – Provide Accurate Itemized Wage Statements

21 113. Defendants failed to provide accurate wage statements to Plaintiff and the aggrieved
22 employees in violation of Cal. Lab. Code §§ 226, 226.2, and 226.3.

23 114. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

24 Count VI – Failure to Timely Pay Wages Upon Termination

25 115. As a result of not paying Plaintiff or the aggrieved employees proper wages, Defendants
26 also violated Cal. Lab. Code §§ 201, 202, and 203 by failing to pay employees all wages due upon
27 termination or resignation.

28 116. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

1 117. Count VII – Failure to Reimburse Employees for Necessary Business Expenses

2 118. Defendants failed to reimburse Plaintiff and the aggrieved employees for all their work-
3 related phone and vehicle usage in violation of Cal. Lab. Code §§ 2802.

4 119. Plaintiff reincorporates all above paragraphs as if fully set forth herein.

5 120. As a direct and proximate result of Defendants' California Labor Code violations as set
6 forth in this Complaint, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per
7 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
8 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
9 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do
10 expressly provide for a penalty.

11 121. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
12 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

13
14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**
16 **AGAINST DEFENDANTS AND DOES 1 THROUGH 50, INCLUSIVE**

17 122. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as
18 though fully set forth herein.

19 123. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
20 therefore, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
21 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

22 124. Labor Code §226(c) requires an employer, within twenty-one (21) days of a written
23 request therefore, to inspect or receive a copy of an employee's payroll records. An employer's failure to
24 do so subjects the employer to a \$750.00 penalty, payable to the employee, pursuant to Labor Code
25 §226(f).

26 125. Labor Code §432 requires an employer, upon request, to give to an employee a copy of
27 any instrument signed by the employee relating to the obtaining or holding of employment.
28

126. On February 11, 2020, Plaintiff made a written request to inspect or receive a copy of his personnel and payroll records from Defendants, which Defendants received.

127. Defendants failed and refused to permit Plaintiff's inspection of his personnel and payroll records and failed to provide a copy of Plaintiff's personnel and payroll records to him, within the time required by Labor Code §1198.5 and §226(c), or ever.

128. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

129. As a result of Defendants' failure and refusal to comply with Labor Code §226(c), Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and DOES 1 through 50, each of them, in an amount according to proof, as follows:

1. For payment of meal and rest period compensation pursuant to Labor Code §226.7, in the amount of no less than \$29,100.00;

2. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

3. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less than \$5,242.03;

4. For damages pursuant to Labor Code §2802 in the amount to be determined at the time of trial;

5. For statutory penalties pursuant to Labor Code §2699(f), in the amount to be determined at the time of trial;

6. For statutory penalties pursuant to Labor Code §1198.5, for no less than \$750.00;

7. For statutory penalties pursuant to Labor Code §226(c)(f), for no less than \$750.00;

8. For statutory penalties pursuant to Labor Code §246, according to proof;

9. For statutory penalties pursuant to Labor Code §2810.5, according to proof;

10. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;

1 11. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code, the
2 Civil Code, and/or any other basis;

3 12. For post-judgment interest; and

4 13. For any other relief that is just and proper.
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1 DATED: March 31, 2021

EMPLOYEE JUSTICE LEGAL GROUP, P.C.

2
3 By: 
4 Kaveh S. Elihu, Esq.
5 Jacob Karczewski, Esq.
6 Daniel J. Friedman, Esq.
7 Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff demands a trial by jury on all claims as provided by California law.

10 DATED: March 31, 2021

EMPLOYEE JUSTICE LEGAL GROUP, P.C.

11 By: 
12 Kaveh S. Elihu, Esq.
13 Jacob Karczewski, Esq.
14 Daniel J. Friedman, Esq.
15 Attorneys for Plaintiff
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