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ANTONIO PEREZ CONSTANTINO

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

ANTONIO PEREZ CONSTANTINO, an  
individual,

Plaintiff,

v.

IONIX PAINTING CO, A California  
Corporation; IONIX CONSTRUCTION, INC.,  
a California Corporation; SUNG CHUN PARK,  
an individual; and DOES 1 through 20,  
inclusive,

Defendants.

Case No. **21STCV38545**

**COMPLAINT FOR DAMAGES FOR:**

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 226.7, 246, 510, 1194, 1197, 1771, 1774);**
- 2. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);**
- 3. FAILURE TO PAY PREVAILING WAGES (CAL. LABOR CODE §§1771, 1774);**
- 4. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
- 5. FAILURE TO PROVIDE PERIODS (CAL. LABOR CODE §226.7);**
- 6. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 7. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 8. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.);**
- 9. RETALIATION (LAB. CODE §§98.6, 232.5, ET SEQ.);**

**10. RETALIATION (LAB. CODE §§1102.5, 1102.6, ET SEQ.);**

## 11. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;

**12. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**

**13. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §§226 *et seq.*, 1198.5).**

## DEMAND OVER \$25,000

**[DEMAND FOR JURY TRIAL]**

**COMES NOW PLAINTIFF, ANTONIO PEREZ CONSTANTINO,** and for causes of action against the Defendants and each of them, alleges as follows:

## JURISDICTION

1. 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 offices 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

2. Plaintiff, ANTONIO PEREZ CONSTANTINO, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant IONIX PAINTING CO (hereinafter referred to as “IONIX PAINTING”) was and is a California corporation doing business at 19235 San Jose Avenue, Los Angeles, CA 91748, in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant IONIX CONSTRUCTION, INC. (hereinafter referred to as “IONIX CONSTRUCTION”) was and is a California corporation doing business at 19235 San Jose Avenue, Los Angeles, CA 91748, in the County of Los Angeles, State of California.

1           5.       IONIX PAINTING and IONIX CONSTRUCTION are herein collectively referred to as  
2 “IONIX” or “EMPLOYERS.”

3           6.       Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
4 hereto, IONIX owned and operated a construction and painting business.

5           7.       At all times relevant herein, IONIX and DOES 1-20 were Plaintiff’s employers, joint  
6 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),  
7 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more  
8 persons and are therefore subject to the jurisdiction of this Court.

9           8.       At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint  
10 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare  
11 Commission Order No. 16-2001, and are each an “employer or other person acting on behalf of an  
12 employer” as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

13           9.       Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
14 hereto, Defendant SUNG CHUN PARK, wans and is an individual resident of the County of Los Angeles,  
15 State of California, and is hereinafter individually referred to as “PARK.” PARK was IONIX’s manager,  
16 corporate agent, supervisor, and/or employee.

17           10.      IONIX, PARK, and DOES 1-20, are collectively referred to as “Defendants.”

18           11.      The true names and capacities, whether individual, corporate, associate, or otherwise, of  
19 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore  
20 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to  
21 insert the true names and capacities of said Defendants when the same become known to Plaintiff.  
22 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named  
23 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as  
24 alleged hereinafter.

25           12.      Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant  
26 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,  
27 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the  
28 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part

1 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,  
2 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

3 13. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each  
4 of them, including those defendants named as DOES 1-20 and PARK, acted in concert with one another  
5 to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one  
6 another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government  
7 Code §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants,  
8 and each of them, including those defendants named as DOES 1-20 and PARK, and each of them, formed  
9 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts  
10 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended  
11 to cause and actually causing Plaintiff harm.

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

15  
16 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

17 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity  
18 of interest and ownership between IONIX, PARK, and DOES 1-20 that the individuality and separateness  
19 of defendants have ceased to exist.

20 16. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of  
21 purported corporate existence, IONIX, PARK, and DOES 1-20 are, in reality, one and the same,  
22 including, but not limited to because:

23 a. IONIX is completely dominated and controlled by PARK and/or DOES 1-20, who  
24 personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden  
25 and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish some other  
26 wrongful or inequitable purpose.

1           b.       IONIX, PARK, and DOES 1-20 derive actual and significant monetary benefits by  
2 and through one another's unlawful conduct, and by using one another as the funding source for their  
3 own personal expenditures.

4           c.       IONIX, PARK, and DOES 1-20, while really one and the same, were segregated  
5 to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or  
6 accomplishing some other wrongful or inequitable purpose.

7           d.       IONIX does not comply with all requisite corporate formalities to maintain a legal  
8 and separate corporate existence.

9           e.       The business affairs of IONIX, PARK, and DOES 1-20 are, and at all times  
10 relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same  
11 are in inextricable confusion. IONIX is, and at all times relevant hereto was, used by PARK and DOES  
12 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the  
13 alter ego of PARK and DOES 1-20. The recognition of the separate existence of Defendants would not  
14 promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff for  
15 violations of the Government Code and other statutory violations. The corporate existence of IONIX,  
16 PARK, and DOES 1-20 should be disregarded in equity and for the ends of justice because such disregard  
17 is necessary to avoid fraud and injustice to Plaintiff herein.

18       17.       Accordingly, IONIX constitutes the alter ego of PARK and DOES 1-20, and the fiction of  
19 their separate corporate existence must be disregarded.

20       18.       As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
21 thereon alleges that IONIX, PARK, and DOES 1-20 are Plaintiff's joint employer by virtue of a joint  
22 enterprise, integrated-enterprise, or otherwise, and that Plaintiff was an employee of IONIX, PARK, and  
23 DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit  
24 of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or  
25 indirectly, and the manner in which Defendants' business was and is conducted.

26       19.       Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and  
27 between DOES 1-20, PARK, IONIX, or any of them, (1) there is an express or implied agreement of  
28 assumption pursuant to which IONIX, PARK, and/or DOES 1-20 agreed to be liable for the debts of the

1 other Defendants, (2) the transaction between IONIX, PARK, and/or DOES 1-20 and the other  
2 Defendants amounts to a consolidation or merger of the two corporations, (3) IONIX, PARK, and/or  
3 DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to IONIX, PARK,  
4 and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly,  
5 IONIX, PARK, and/or DOES 1-20 are the successors of one or more of the other Defendants, and are  
6 liable on that basis.

### 8 **FACTUAL ALLEGATIONS**

9 20. On or about October 2020, Defendants hired Plaintiff to work as a day laborer. Plaintiff  
10 was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before  
11 Plaintiff's wrongful termination on or about February 10, 2021.

12 21. From October 2020 through February 10, 2021 (the "Claim Period"), Plaintiff worked  
13 approximately five (5) days per week, Monday through Friday, averaging 45 hours per week.

14 22. During the Claim Period, Defendants only paid Plaintiff \$225.00 per day regardless of the  
15 amount of time Plaintiff worked per day. Because Defendants only paid Plaintiff a flat daily salary of  
16 \$225.00, rather than for each hour worked, pursuant to Labor Code § 515(d)(2), his salary is deemed to  
17 provide compensation only for Plaintiff's regular, nonovertime hours, notwithstanding any private  
18 agreement to the contrary. As a result, Plaintiff was paid no wages at all, for hours beyond 8 in a day, or  
19 40 in a week. Based upon Plaintiff's salary, pursuant to Labor Code §515(d)(1), Plaintiff's hourly wage  
20 rate is 1/40th of the Plaintiff's weekly salary, or \$28.13 per hour. Therefore, at all relevant times,  
21 Defendants failed to pay Plaintiff for hours worked beyond eight in a day or beyond 40 in a week, not  
22 Plaintiff's hourly wage rate, the requisite minimum wage, or overtime premium.

23 23. On information and belief, Defendants assigned Plaintiff to perform work that were  
24 government funded projects, entitling Plaintiff and other aggrieved employees to prevailing wages, but  
25 Defendants did not pay prevailing wages, thereby violating Labor Code §§ 1771, 1774-1776, *et seq.*

26 24. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of  
27 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion  
28 thereof.

1           25.     Although Plaintiff was entitled to and did accrue sick time for which he was never paid,  
2 Defendants violated Labor Code §§ 233, 245, and 246 because Defendants failed to provide Plaintiff with  
3 paid sick leave.

4           26.     Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages  
5 for all hours worked paid at least twice during each calendar month to employees as required “by  
6 contract” under Labor Code section 223, as well as an improper collection of wages paid to an employee  
7 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.  
8 Mar. 6, 2013).

9           27.     Throughout Plaintiff’s employment, Defendants violated Labor Code §221 by collecting  
10 and/or receiving from Plaintiff, part of his wages paid by Defendants.

11           28.     Throughout Plaintiff’s employment, Plaintiff was only paid in cash and was not provided  
12 with any paystubs in compliance with Labor Code §226.

13           29.     Defendants violated Labor Code §227.3 because Defendants failed to pay Plaintiff, and  
14 other aggrieved employees, unused, vested vacation time.

15           30.     Plaintiff is informed and believes, and thereon alleges, that herself and other employees  
16 were subject to the same violations and, therefore, are aggrieved employees within the meaning of  
17 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, reserves her right to bring an  
18 action against Defendants, on behalf of herself and other current and former employees.

19           31.     *Additionally, pursuant to Huff v. Securitas Security Services USA, Inc.* (2018) 23  
20 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on  
21 behalf of other aggrieved employees for other violations that she was not personally “aggrieved” by.

22           32.     On or about February 2021, Plaintiff’s supervisor told Plaintiff to be careful working since  
23 it was a government job.

24           33.     Thereafter, Plaintiff asked if there was a union that represented the workers since it was a  
25 government job, but Plaintiff’s supervisor ignored Plaintiff, and another coworker told Plaintiff he should  
26 not be asking such questions.

27           34.     Thereafter, on or about February 10, 2021, Defendants terminated Plaintiff under the  
28 pretense that there was no more work for him.

1           35. Plaintiff's termination was substantially motivated by Plaintiff's engagement in protected  
2 activity, including asking if the work was government funded and if the workers were represented by a  
3 union. Defendants' discriminatory and retaliatory animus is evidenced by the previously mentioned facts.

4           36. Defendants' conduct described herein was undertaken, authorized, and/or ratified  
5 Defendants' officers, directors and/or managing agents, including, but not limited to PARK and those  
6 identified herein as DOES 1 through 20, who were authorized and empowered to make decisions that  
7 reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and  
8 individuals was therefore undertaken on behalf of Defendants who further had advanced knowledge of  
9 the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and  
10 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are  
11 therefore identified and designated herein as DOES 1 through 20, inclusive.

12           37. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general  
13 and special damages, including severe and profound pain and emotional distress, anxiety, depression,  
14 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological  
15 counseling and treatment, and past and future lost wages and benefits.

16           38. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,  
17 commissions, benefits and loss or diminution of earning capacity.

18           39. Plaintiff claims general damages for emotional and mental distress and aggravation in a  
19 sum in excess of the jurisdictional minimum of this Court.

20           40. Because the acts taken toward Plaintiff were carried out by officers, directors and/or  
21 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard  
22 of Plaintiff's rights and in order to injure and damage Plaintiff.

**FIRST CAUSE OF ACTION**  
**FOR FAILURE TO PAY WAGES DUE**  
**LABOR CODE §§201, 226.7, 246, 510, 1182.12, 1194, 1194.2, 1197, 1771, 1774**  
**AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

41. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

42. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11160, as set forth hereinabove. As alleged herein, Defendants routinely underpaid Plaintiff, failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week, failed to pay Plaintiff wages for missed rest breaks, and failed to pay Plaintiff for sick time.

43. Labor Code § 1771 states in pertinent part: “[N]ot less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all works employed on public works.”

44. Labor Code § 1774 states: “The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.”

45. Labor Code §§ 1194(a) states in pertinent part: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney’s fees, and costs of suit.”

46. Labor Code §§ 1194.2(a) states in pertinent part: “In any action under ... 1194 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

47. Labor Code § 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

1           48. Defendants, as a pattern and practice in uniform administration of corporate policy with  
2 regard to Plaintiff and the other aggrieved employees, required Plaintiff and the other aggrieved  
3 employees to perform labor without compensation. Specifically, Plaintiff and the other aggrieved  
4 employees were made to work through their rest breaks.

5           49. As such, Defendants required the Plaintiff and the other aggrieved employees to remain  
6 under Defendants' control without paying therefore, which resulted in Plaintiff and the other aggrieved  
7 employees earning less than the legally required minimum wage and/or prevailing wage in the State of  
8 California.

9           50. Defendants' pattern and practice in uniform administration of corporate policy regarding  
10 Defendants' failure to pay the legal minimum wage to Plaintiff and the other aggrieved employees as  
11 described herein is unlawful and creates entitlement, pursuant to Labor Code § 1194(a), to recovery by  
12 Plaintiff and the other aggrieved employees, in a civil action, for the unpaid balance of the full amount  
13 of the unpaid minimum wages owed, calculated as the difference between the applicable minimum wage  
14 and the straight time compensation, including interest thereon.

15           51. Plaintiff accrued approximately 72 hours of sick time pursuant to Labor Code §246, and  
16 Defendant failed to pay these wages, totaling approximately \$1,120.

17           52. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8  
18 Code of Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

19           53. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and  
20 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to  
21 recover such amounts, plus interest thereon, attorneys' fees and costs.

22           54. Pursuant to Labor Code § 1194.2(a), Plaintiff and the other aggrieved employees seek  
23 recovery of liquidated damages in an amount equal to the wages unlawful unpaid and interest thereon.

24           55. Pursuant to Labor Code § 218.6, Labor Code § 1194(a), and Civil Code § 3287, Plaintiff  
25 and the other aggrieved employees seek recovery of pre-judgment interest on all amounts recovered  
26 herein.

1           56. Pursuant Labor Code § 218.5 and/or Labor Code § 1194(a), Plaintiff and the other  
2 aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by them  
3 in this action

4           57. Labor Code §558(a) provides that any person acting on behalf of an employer who  
5 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order  
6 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid  
7 employee for each pay period in which the employee was underpaid in addition to an amount sufficient  
8 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting  
9 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period  
10 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

11  
12                                   **SECOND CAUSE OF ACTION**  
13                                   **FOR FAILURE TO PAY MINIMUM WAGES**  
14                                   **LABOR CODE §§1182.12, 1194, 1194.2, 1197**  
15                                   **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

16           58. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
17 though set forth in full herein.

18           59. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is  
19 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid  
20 hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum  
21 wage for every hour worked.

22           60. The historical minimum wage requirements in California are as follows:

| Effective | 26+ employees | 1-25 employees |
|-----------|---------------|----------------|
| 1/1/21    | \$13.00       | \$14.00        |
| 1/1/20    | \$12.00       | \$13.00        |
| 1/1/19    | \$12.00       | \$11.00        |
| 1/1/18    | \$11.00       | \$10.50        |
| 1/1/17    | \$10.50       | \$10.00        |

| Effective | New wage | Old Wage |
|-----------|----------|----------|
| 1/1/16    | \$10.00  | \$9.00   |
| 7/1/14    | \$9.00   | \$8.00   |

|   |  |        |        |        |
|---|--|--------|--------|--------|
| 1 |  | 1/1/08 | \$8.00 | \$7.50 |
| 2 |  | 1/1/07 | \$7.50 | \$6.75 |

3           61. Labor Code § 1771 states in pertinent part: “[N]ot less than the general prevailing rate of  
4 per diem wages for work of a similar character in the locality in which the public work is performed, and  
5 not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as  
6 provided in this chapter, shall be paid to all works employed on public works.”

7           62. Labor Code § 1774 states: “The contractor to whom the contract is awarded, and any  
8 subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen  
9 employed in the execution of the contract.”

10          63. In the four years immediately preceding the filing of this complaint, Defendants failed and  
11 refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code  
12 §1182.12, in each of the following ways:

13           a. During the Claim Period, Plaintiff worked approximately 45 hours per week and  
14 was paid \$1,125.00 per week, or 225.00 per day, equating to \$28.13 per hour. Plaintiff was not paid  
15 beyond eight hours in a day or 40 per week, Thus, Defendants underpaid Plaintiff \$534.47, calculated at  
16 5 unpaid hours per week for 19 weeks, at \$28.13 per hour;

17           b. During the Claim Period, Defendants underpaid Plaintiff and other aggrieved  
18 employees by refusing to pay the proper prevailing wages.

19          64. Thus, during the Claim Period, Plaintiff is owed unpaid minimum wages in the amount  
20 according to proof.

21          65. Defendants’ failure to pay the legal minimum wage to Plaintiff as alleged herein is  
22 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action  
23 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between  
24 the straight time compensation paid and applicable minimum wage, including interest thereon.

25          66. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable  
26 attorneys’ fees and costs incurred by Plaintiff in this action.  
27  
28

1           67.     In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated  
2 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an amount  
3 according to proof, plus interest thereon

4           68.     Pursuant to Labor Code § 1194.2(a), the Plaintiff and the other aggrieved employees seek  
5 recovery of liquidated damages in an amount equal to the wages unlawful unpaid and interest thereon.

6           69.     Pursuant to Labor Code § 218.6, Labor Code § 1194(a), and Civil Code § 3287, Plaintiff  
7 and the other aggrieved employees seek recovery of pre-judgment interest on all amounts recovered  
8 herein.

9  
10                               **THIRD CAUSE OF ACTION**  
11                               **FOR FAILURE TO PAY PREVAILING WAGE RATES**  
12                               **LABOR CODE §§1771, 1774**  
13                               **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

14           70.     Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
15 though set forth in full herein.

16           71.     Labor Code § 1771 states in pertinent part: “[N]ot less than the general prevailing rate of  
17 per diem wages for work of a similar character in the locality in which the public work is performed, and  
18 not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as  
19 provided in this chapter, shall be paid to all works employed on public works.”

20           72.     Labor Code § 1774 states: “The contractor to whom the contract is awarded, and any  
21 subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen  
22 employed in the execution of the contract.”

23           73.     Labor Code §§ 1194(a) states in pertinent part: “Notwithstanding any agreement to work  
24 for a lesser wage, any employee receiving less than the legal minimum wage ... is entitled to recover in a  
25 civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon,  
26 reasonable attorney’s fees, and costs of suit.”

27           74.     Labor Code §§ 1194.2(a) states in pertinent part: “In any action under ... 1194 or 1197.1  
28 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the

1 commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal  
2 to the wages unlawfully unpaid and interest thereon.”

3 75. Labor Code § 1197 states: “The minimum wage for employees fixed by the commission  
4 or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment  
5 of a lower wage than the minimum so fixed is unlawful.”

6 76. Pursuant to the General Prevailing Wage Determination made by the Director of Industrial  
7 Relations pursuant to Labor Code §§ 1770, 1773 and 1773.1, the prevailing rates for the past four years  
8 are as follows:

9 a. During the Claim Period, the basic hourly rate was at least \$59.88 for day laborer.

10 77. Defendants, as a matter of established company policy and procedure, at each and every  
11 one of the individual facilities owned and/or operated by Defendants, consistently:

12 a. Administered a uniform company policy and practice as to the pay policies regarding  
13 Plaintiff and the other aggrieved employees;

14 b. Paid Plaintiff and the other aggrieved employees at a rate of less than the required  
15 statutory prevailing rate pursuant to Labor Code §§ 1771 and 1774;

16 c. As such, required Plaintiff and the other aggrieved employees to work without paying  
17 at least the minimum wage for all the time they were under Defendants’ control.

18 78. As such, Defendants required Plaintiff and the other aggrieved employees to remain under  
19 Defendants’ control without paying the requisite prevailing wage rate, which resulted in Plaintiff and the  
20 other aggrieved employees earning less than the legal minimum wage pursuant to statute under California  
21 law.

22 79. Defendants’ pattern and practice in uniform administration of corporate policy regarding  
23 Defendants’ failure to pay the legal prevailing wage rate to Plaintiff and the other aggrieved employees  
24 as described herein is unlawful and creates entitlement, pursuant to Labor Code § 1194(a), to recovery  
25 by Plaintiff and the other aggrieved employees, in a civil action, for the unpaid balance of the full amount  
26 of the unpaid minimum wages owed, calculated as the difference between the applicable minimum wage  
27 and the straight time compensation, including interest thereon.  
28

1           80. Pursuant to Labor Code § 1194.2(a), Plaintiff and the other aggrieved employees seek  
2 recovery of liquidated damages in an amount equal to the wages unlawful unpaid and interest thereon.

3           81. Pursuant to Labor Code § 218.6, Labor Code § 1194(a), and Civil Code § 3287, Plaintiff  
4 and the other aggrieved employees seek recovery of pre-judgment interest on all amounts recovered  
5 herein.

6           82. Pursuant Labor Code § 218.5 and/or Labor Code § 1194(a), Plaintiff and the other  
7 aggrieved employees request that the Court award reasonable attorneys' fees and costs incurred by them  
8 in this action.

9  
10                                   **FOURTH CAUSE OF ACTION**  
11                                   **FOR FAILURE TO PAY OVERTIME COMPENSATION**  
12                                   **LABOR CODE §§510, 1194**  
13                                   **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

14           83. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
15 though set forth in full herein.

16           84. Labor Code §510 requires employers to pay their non-exempt employees one and one-half  
17 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40  
18 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12  
19 hours in a single day. It also requires employers to pay their non-exempt employees overtime  
20 compensation for the first eight hours of work done on the seventh consecutive day of work done in any  
21 work week, and double-time compensation for any work done beyond the first eight hours on the seventh  
22 consecutive day of work.

23           85. At all relevant times, Defendants required Plaintiff to work more than eight hours per  
24 day and/or more than 40 hours per workweek.

25           86. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime  
26 compensation required by Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare  
27 Commission Order No. 16-2001.

1           87. During the Claim Period, Plaintiff worked approximately 5 hours of overtime each  
2 week, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time.  
3 Defendants failed to pay Plaintiff the requisite overtime wages in each of the following ways in the four  
4 years immediately preceding the filing of this complaint:

5           a. During the Claim Period, Plaintiff's hourly overtime rate was \$42.20 (\$28.13 x  
6 1.5). During this time period, Plaintiff worked an average of 5 hours of overtime each week, for 19 weeks,  
7 or 95 hours, but did not receive any wages for these hours at all. Therefore, less the minimum wage  
8 portion of \$28.13 per hour which Plaintiff has already claimed in the preceding cause of action, Plaintiff  
9 is owed \$14.07 for each of those hours, totaling \$1,226.65;

10           b. During the Claim Period, Defendants underpaid Plaintiff and other aggrieved  
11 employees by refusing to pay the proper prevailing wages.

12           88. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor  
13 Code §510, 8 Code Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

14           89. Defendants, as a matter of established company policy and procedure, at each and every  
15 one of the individual facilities owned and/or operated by Defendants, consistently:

16           a. Administered a uniform company policy and practice as to the pay policies  
17 regarding Plaintiff and the other aggrieved employees; and

18           b. Paid Plaintiff and the other aggrieved employees for straight time only, with no  
19 overtime premiums.

20           90. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages  
21 in an amount according to proof, above and beyond the minimum wages sought in the preceding cause  
22 of action for these same hours.

23           91. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a  
24 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is  
25 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

**FIFTH CAUSE OF ACTION**  
**FOR FAILURE TO PROVIDE REST BREAKS**

**LABOR CODE §226.7**  
**AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

92. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

93. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion thereof.

94. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and was thereby entitled to take two 10-minute rest periods on each day of work.

95. Defendants failed and refused to provide Plaintiff with rest periods, and failed to compensate Plaintiff for missed rest periods, as required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-2001, as follows:

a. During the Claim Period, Plaintiff was deprived of his statutory 10-minute rest periods on approximately 95 days (5 days per week for 19 weeks).

96. As alleged herein, Plaintiff is not exempt from the rest break requirements of 8 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, the requisite minimum wage, or prevailing whichever is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

a. During the Claim Period, Defendants failed to provide Plaintiff with an uninterrupted statutory rest period on approximately 95 separate days. Consequently, Plaintiff is owed one hour of pay at \$28.13 for each day, or \$2,672.35, plus interest thereon, for unpaid rest periods.

97. Thus, the total missed rest period compensation owing Plaintiff for this time period is at least \$2,672.35.

98. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for rest breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

1            99.     Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover the  
2 amount of \$2,672.35, pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

3  
4                                    **SIXTH CAUSE OF ACTION**  
5                                    **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**  
6                                    **LABOR CODE §§226 ET SEQ.**  
7                                    **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

8            100.    Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
9 though set forth in full herein.

10           101.    Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-  
11 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,  
12 total deductions and net wages earned. An employer who violates these code sections is liable to its  
13 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the  
14 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay  
15 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is  
16 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement  
17 at all.

18           102.    In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates  
19 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation  
20 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

21           103.    At all relevant times, Defendants failed to provide Plaintiff with any wage statements  
22 showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and  
23 address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each  
24 pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the  
25 majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not  
26 inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash  
27 without any calculations of how Plaintiff's gross wages were calculated.

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

1           105. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,  
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in  
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled  
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating  
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting  
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,  
7 sick time, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at  
8 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

9           106. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226  
10 approximately 51 times during the one year preceding the filing of this complaint. Consequently,  
11 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum  
12 amount of \$4,000.00, whichever is greater.

13           107. In addition thereto, for Defendant's 51 violations, Defendants are penalized \$250.00 for  
14 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due  
15 in Labor Code §226.3 penalties of \$50,250.

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

19  
20                           **SEVENTH CAUSE OF ACTION**  
21                           **FOR WAITING TIME PENALTIES**  
22                           **LABOR CODE §§201-203**

23                           **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

24           109. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
25 though set forth in full herein.

26           110. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and  
27 other compensation due immediately upon termination or within 72 hours of resignation, as required.  
28 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, sick wages, and

1 rest period compensation that Defendants should have paid, but did not pay to Plaintiff during the term  
2 of Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code  
3 §§201-203.

4 111. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-  
5 203.

6 112. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff  
7 is entitled to payment of Plaintiff's minimum wages, overtime, sick wages, rest periods as previously  
8 pleaded herein, and more than \$7,595.10 in wait time penalties, calculated based on 30 days of Plaintiff's  
9 daily wage rate of \$253.17, inclusive of overtime, rest period wages, and other wages.

10 113. Based on Defendants' conduct as alleged herein, Defendants are liable for \$7,595.10 in  
11 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'  
12 fees and costs.

13  
14 **EIGHTH CAUSE OF ACTION**  
15 **FOR PRIVATE ATTORNEY GENERAL ACT**  
16 **LABOR CODE §2699**  
17 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

18 114. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
19 though set forth in full herein.

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

23 116. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and  
24 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as  
25 previously pleaded in this Complaint.

26 117. On February 16, 2021, more than 65 calendar days before filing this Complaint, Plaintiff  
27 provided written notice by certified mail to the Labor and Workforce Development Agency and to  
28 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby

1 satisfying the requirements of Labor Code §2699.3(a). This Complaint include violations of Labor Code  
2 §§ 98.6, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 246, 510, 551, 552, 1102.5, 1102.6, 1194,  
3 1197, 1771, 1774, 2802, each of which is enumerated among the serious violations set forth in Labor  
4 Code §2699.5.

5 118. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5  
6 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code  
7 §2699.3(a) and §2699.3(c) apply to this action.

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

11 120. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants  
12 written notice by certified mail that the alleged violations have been cured, including a description of the  
13 actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given  
14 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor  
15 Code §2699.

### 16 17 **PENALTIES**

18 121. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code  
19 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development  
20 Agency ("LWDA") (or any of its departments, divisions, commissions, board agency or employees), such  
21 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved  
22 employee on behalf of himself or herself and other current or former employees) and Labor Code  
23 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which  
24 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil  
25 penalties, as follows:

- 26 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code  
27 except for those for which a civil penalty is specifically provided, in the amount of one hundred  
28 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent  
2 violation, including those violations notated in Paragraph 117; and

3 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent  
4 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code  
5 §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the  
6 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid  
7 wages, and \$100 for each subsequent violation for each underpaid employee for each pay  
8 period for which the employee was underpaid; and also an additional amount sufficient to  
9 recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557  
10 paid to the aggrieved employees. Plaintiff is entitled to recover approximately \$2,550 for civil  
11 penalties, including for violations under Labor Code § 226.7. Plaintiff is also able to collect  
12 an additional penalty to be distributed to the other aggrieved employees in an amount according  
13 to proof;

14 c) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent  
15 and apart from any other penalty provided in the Labor Code) for violations of Labor Code §  
16 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period  
17 the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful  
18 or intentional violation, for each underpaid aggrieved employees regardless of whether the  
19 initial violation was intentionally committed, in addition to 25 percent of the amount  
20 unlawfully withheld;

21 d) As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent  
22 and apart from any other penalty provided in the Labor Code), for each employee who is/was  
23 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5  
24 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay  
25 period for each initial violation, and \$200 for each aggrieved employee per pay period for each  
26 subsequent violation, plus 25 percent of the amount unlawfully withheld;

27 e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent  
28 and apart from any other penalty provided in the Labor Code), for each violation of Labor

- Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;
- f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other civil penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
- g) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days; and
- h) As applicable, any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

122. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to the aggrieved employees.

123. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

124. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 558.

1           125. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek  
2 recovery of pre-judgment interest on all amounts recovered herein.

3           126. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to  
4 Labor Code §§2699(g)(1) and any other applicable statute.

5  
6                                   **NINTH CAUSE OF ACTION**

7                                   **RETALIATION**

8                                   **LABOR CODE §§98.6, 232.5,**

9                                   **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10           127. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
11 though set forth in full herein.

12           128. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against  
13 an employee for political activities; for complaining that he or she is owed unpaid wages, for  
14 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,  
15 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's  
16 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for  
17 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private  
18 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code.  
19 Thus, Section 98.6 prohibits an employer from discharging or in any manner discriminating or  
20 retaliating against an employee who, among other things, has exercised his or her rights under that  
21 Chapter (Chapter 5 of the Labor Code, which encompasses §1102.5), including the right to take meal  
22 breaks, and/or made a written or oral complaint that he or she is owed unpaid wages. An employee  
23 who has been discharged or retaliated against in violation of Labor Code §98.6 is entitled to recovery of  
24 a civil penalty against the employer in an amount not exceeding ten thousand dollars (\$10,000.00) for  
25 each violation of that section.

26           129. At all relevant times, Labor Code §232.5 was in full force and effect and binding on  
27 Defendants. Labor Code §232.5(b) prohibits an employer from discharging, formally disciplining, or  
28

1 otherwise discriminating against an employee who discloses information about the employer's working  
2 conditions.

3 130. Plaintiff is informed and believe, and based thereupon alleges, that Plaintiff was  
4 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not  
5 being paid all wages due and working off the clock and questioning whether the employees were  
6 represented by a union. Defendants' retaliatory animus is evidenced by, among other things, the  
7 following facts: (1) The termination occurred following Plaintiff's complaints regarding unpaid wages  
8 and representation by a union; (2) There were no performance issues or any other legitimate reason for  
9 Plaintiff's termination; and (3) Plaintiff was wrongfully terminated

10 131. Defendants' conduct described herein was undertaken, authorized, and/or ratified by  
11 Defendants, and Defendants' officers and/or managing agents, including PARK and those identified  
12 herein as DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create  
13 policy for Defendants. The aforementioned conduct of said managing agents and individuals was  
14 therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the  
15 actions and conduct of said individuals whose actions and conduct were ratified, authorized, and  
16 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are  
17 therefore identified and designated herein as DOES 1-20, inclusive.

18 132. The damage allegations of Paragraphs 37 through 40, inclusive, are herein incorporated  
19 by reference.

20 133. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed  
21 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

22 134. Because the acts taken toward Plaintiff were carried out by managerial employees acting  
23 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights  
24 and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against  
25 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.  
26  
27  
28

1 **TENTH CAUSE OF ACTION**

2 **FOR RETALIATION**

3 **IN VIOLATION OF LABOR CODE §§ 1102.5, 1102.6**

4 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

5 135. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though  
6 set forth in full herein.

7 136. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was  
8 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer,  
9 from discharging an employee or in any manner discriminating or retaliating against, or taking any  
10 adverse action against, an employee because, among other things, the employee disclosed information  
11 to a government or law enforcement agency, or to a person with authority over the employee or another  
12 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if  
13 the employee has reasonable cause to believe that the information discloses a violation of state or  
14 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,  
15 regardless of whether disclosing the information is part of the employee's job duties. Pursuant to Labor  
16 Code §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability  
17 company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of  
18 this section.

19 137. Defendants subjected Plaintiff to the adverse employment action, including without  
20 limitation, suspension and termination because Plaintiff reported the suspected violations of the Labor  
21 Code and questioned whether the employees were being represented by a union.

22 138. Plaintiff's reports of these violations and questions were a motivating and contributing  
23 factor for the adverse employment actions by Defendants against Plaintiff.

24 139. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was  
25 terminated from his employment with IONIX as a result of her complaints to IONIX. Defendants'  
26 retaliatory animus is evidenced by, among other things, the following facts: (1) The terminations  
27 occurred following Plaintiff's disclosure unpaid wages and questioning about union representation; (2)  
28

1 There were no performance issues or any other legitimate reason for Plaintiff's termination; and (3)  
2 Plaintiff was wrongfully terminated.

3 140. Defendants' conduct described herein was undertaken, authorized, and/or ratified by  
4 IONIX, and IONIX's officers and/or managing agents, and those identified herein as DOES 1-20, who  
5 were authorized and empowered to make decisions that reflect and/or create policy for Defendants.  
6 The aforementioned conduct of said managing agents and individuals was therefore undertaken on  
7 behalf of IONIX. IONIX further had advanced knowledge of the actions and conduct of said  
8 individuals whose actions and conduct were ratified, authorized, and approved by managing agents  
9 whose precise identities are unknown to Plaintiff at this time and are therefore identified and designated  
10 herein as DOES 1-20, inclusive.

11 141. Said conduct violates Labor Code Labor Code §§ 232.5, 1102.5, 1102.6, and 6310, and  
12 such violations were a proximate cause in Plaintiff's damages as hereinabove stated.

13 142. The damage allegations of Paragraphs 37 through 40, inclusive, are herein incorporated  
14 by reference.

15 143. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed  
16 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

17 144. The foregoing conduct of Defendants individually, or by and through their managing  
18 agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on  
19 by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to  
20 cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice,  
21 oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an  
22 amount appropriate to punish or make an example of Defendants.

**ELEVENTH CAUSE OF ACTION**  
**FOR WRONGFUL TERMINATION**  
**IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**  
**AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

145. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

146. At all times mentioned in this complaint, Labor Code §§ 98.6, 232.5, and 1102.5 were in full force and effect and binding on Defendants. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of individual employees and job applicants who could not otherwise afford to protect themselves from violations of the Labor Code. Labor Code §1102.5 reflects the State's broad public policy interest in encouraging workplace "whistleblowers," who may without fear of retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether the reporting is made to governmental agencies or to the employer itself, and irrespective of whether the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed, the law in California is that an employee's good faith but mistaken belief in the illegality of his co-workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistle-blowing context. These laws require Defendants to refrain, among other things, from discharging, suspending, or in any other manner discriminating against an employee because the employee has made a bona fide oral or written complaint to his or her employer and disclosed the employer's working conditions, or the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. The Labor code furthers that any employer who willfully refuses to rehire, promote, or otherwise restore an employee is guilty of a misdemeanor.

147. At all times mentioned in this complaint, it was a fundamental policy of the State of California that Defendants cannot retaliate against any employee on the basis of engagement in protected activity.

148. Plaintiff believes and thereon alleges that Plaintiff's non-adherence and complaints of Defendant's noncompliance with the Labor Code, and Plaintiff's engagement in protected activity,

1 including questioning if employees were represented by a union, Labor Code violations, unpaid wages,  
2 and communicating advising other employees of their rights under the Labor Code were factors in  
3 Defendants' conduct as alleged hereinabove.

4 149. Such retaliation, resulting in the wrongful termination of Plaintiff's employment on the  
5 basis of Plaintiff's engagement in protected activity, and/or some combination of these factors, were a  
6 proximate cause in Plaintiff's damages as stated below.

7 150. The above said acts of Defendants constitute violations of the Government Code, Labor  
8 Code, and the public policy of the State of California embodied therein as set forth above. Defendants  
9 violated these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's  
10 employment in retaliation for exercise of protected rights.

11 151. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's  
12 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in  
13 Plaintiff's damages as stated below.

14 152. The damage allegations of Paragraphs 37 through 40, inclusive, are herein incorporated  
15 by reference.

16 153. The foregoing conduct of Defendants individually, or by and through their officers,  
17 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or  
18 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the  
19 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's  
20 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling  
21 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

22  
23 **TWELFTH CAUSE OF ACTION**

24 **FOR UNFAIR COMPETITION**

25 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

26 **AGAINST BRINK'S AND DOES 1-20, INCLUSIVE**

27 154. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as  
28 though set forth in full herein.

155. Defendants' violations of 8 Code of Regulations §11160, Industrial Welfare Commission Order No. 16-2001, Labor Code §§98.6, 201-203, 206.5, 221, 226, 226.7, 232.5, 510, 558, 1102.5, 1102.6, 1182.12, 1194, 1194.2, 1197, 1198.5, 2802, 1771, 1774, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay wages for missed rest breaks, Defendants' failure to pay all wages for hours worked including prevailing wages, minimum wages and overtime, Defendants' failure to reimburse Plaintiff for business expenses, Defendants' improper and unlawful deductions, Defendants' retaliation against Plaintiff for engaging in protected activity, including complaining about his safety, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

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

157. 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 overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

### THIRTEENTH CAUSE OF ACTION

## FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS

**LABOR CODE §§226 *et seq.*, 1198.5**

**AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

158. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

159. Labor Code §226(c) requires an employer, within twenty-one (21) days of a written request thereof, to inspect or receive a copy of an employee's records. Pursuant to Labor Code §226(f), an employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

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

161. On February 11, 2021, Plaintiff made a written request to inspect or receive a copy of his personnel and payroll records from Defendants, which Defendants received.

162. 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 §§ 226 *et seq.*, 1198.5, or ever.

163. As a result of Defendants' failure and refusal to comply with Labor Code §§ 226, and 1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$1,500.00.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof but estimated to be no less than \$1,000,000 as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For payment of prevailing wages pursuant to Labor Code §§1770, 1771, AND 1774, in the amount according to proof;

3. For payment of unpaid minimum wage compensation pursuant to Labor Code §§226.7, 1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 16-2001, in the amount according to proof;

4. For liquidated damages pursuant to Labor Code §1194.2 in the amount according to proof,  
plus interest;

5. For payment of wages pursuant to Labor Code §§ 233, 245, 246, in the amount of \$1,120, plus interest;

1           6.       For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,  
2 Industrial Welfare Commission Order No. 16-2001, and 8 Code of Regulations §11160, in the amount  
3 according to proof;

4           7.       For payment of rest period compensation pursuant to Labor Code §226.7, in the amount  
5 of no less than \$2,672.35;

6           8.       For damages pursuant to Labor Code §221 in the amount according to proof;

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

8           10.      For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no  
9 less than \$50,250;

10          11.      For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less  
11 than \$7,595.10;

12          12.      For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

13          13.      For civil penalties pursuant to Labor Code §1102.5 in the amount of no less than  
14 \$10,000.00;

15          14.      For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely  
16 independent and apart from other penalties in the Labor Code and for Labor Code violations without a  
17 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each  
18 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

19          15.      For civil penalties under Labor Code §210, in addition to and entirely independent and  
20 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved  
21 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for  
22 each subsequent violation, plus 25 percent of the amount unlawfully withheld;

23          16.      For civil penalties under Labor Code §2802, in addition to and entirely independent and  
24 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved  
25 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for  
26 each subsequent violation;

27          17.      For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely  
28 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor

Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;

18. For civil penalties under Labor Code §226.3, in addition to and entirely independent and apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

19. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely independent and apart from any other penalty provided in the Labor Code, in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

20. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and any other applicable statute; and

21. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6, Labor Code §1194(a), and/or Civil Code §3287;

**WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an amount according to proof, as follows:

22. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and condemning Defendants' discriminatory practices;

23. For injunctive relief barring Defendants' discriminatory employment policies and practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

24. For injunctive relief compelling Defendants to report to federal and state authorities wages earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all this in an amount according to the proof;

25. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

1           26.     For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful  
2 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other  
3 compensation in accordance with the law;

4           27.     For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or  
5 any other basis;

6           28.     For post-judgment interest; and

7           29.     For any other relief that is just and proper.  
8  
9  
10

11 DATED: October 19, 2021

**GUERRA & CASILLAS LLP**

12  
13 By: 

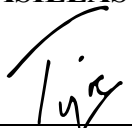
14 Ruben Guerra, Esq.  
15 Tizoc Perez-Casillas, Esq.  
16 Attorney for Plaintiff  
17 ANTONIO PEREZ CONSTANTINO

18  
**JURY TRIAL DEMANDED**

19 Plaintiff demands trial of all issues by jury.  
20

21 DATED: October 19, 2021

**GUERRA & CASILLAS LLP**

22 By: 

23 Ruben Guerra, Esq.  
24 Tizoc Perez-Casillas, Esq.  
25 Attorney for Plaintiff  
26 ANTONIO PEREZ CONSTANTINO  
27  
28