

COPY

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 23 2021

Sherri R. Carter, Executive Officer/Clerk of Court

LIDMAN LAW, APC
Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
ANDRES PAYAN

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
ANDRES PAYAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANDRES PAYAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

AIRCRAFT COMPONENT REPAIR, INC. a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV04846

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT ALL PAID REST PERIODS
(LABOR CODE §§ 226.7, 516, 558);**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (5) **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203);**
 - (6) **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
 - (7) **UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**
 - (8) **CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACTION OF 2004 (LABOR CODE § 2698 *et seq.*)**
- DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Andres Payan (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Defendant Aircraft Component Repair, Inc., a California corporation and Does 1 through 100,
4 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business & Professions Code
8 § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2,
9 1197, 1198, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”),
10 in addition to seeking declaratory relief and restitution. This FAC is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
12 violations of the California Labor Code because the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
18 within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles,
19 and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was a California resident during the time he was employed by Defendants. During the
23 four years immediately preceding the filing of the lawsuit in this action and within the statute of
24 limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
25 Defendants as a non-exempt employee in California. Plaintiff was, and is, a victim of Defendants’
26 policies and/or practices complained of herein, lost money and/or property, and has been deprived
27 of the rights guaranteed by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194,
28 1194.2, 1197, 1198, 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.*

1 (“Unfair Competition Law”); and Wage Order 1, which sets employment standards for
2 occupations in the manufacturing industry, which includes the industry in which Plaintiff works
3 for Defendants.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of the lawsuit and continuing to the present, Defendants did (and
6 continue to do) business as a manufacturer of automotive exhaust systems. Defendants employed
7 Plaintiff and other, similarly-situated non-exempt employees within, among other counties, Los
8 Angeles County and the state of California and, therefore, were (and are) doing business in Los
9 Angeles County and the State of California.

10 5. Plaintiff does not know the true names or capacities, whether individual, partner,
11 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
12 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
13 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
14 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
15 partners, or corporate, were responsible in some manner for the acts and omissions alleged
16 herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be
17 subject to the unlawful employment practices, wrongs, injuries and damages complained of
18 herein.

19 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

21 7. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each and every one
24 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
25 were acting within the course and scope of said agency and employment. Defendants, and each
26 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
27 omissions complained of herein.

28 8. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
4 members of the Classes.

5 **GENERAL FACTUAL ALLEGATIONS**

6 9. Plaintiff, a former employee, was employed by Defendants as an hourly, non-
7 exempt employee from approximately November 1990 through on or about August 27, 2020.
8 Plaintiff worked at Defendants' facility located in Santa Clarita, California as a Machine
9 Operator.

10 10. During his employment with Defendants, Plaintiff was generally scheduled to
11 work Monday through Saturday, from approximately 5:00 a.m. to approximately 4:00 p.m.
12 Throughout Plaintiff's employment with Defendants, Defendants' policies and/or practices
13 would be to keep track of Plaintiff's time worked by having him clock in and out on a timecard
14 and Defendants' policies and/or practices would be to unlawfully shave and/or round Plaintiff's
15 work time such that Plaintiff would not be fully paid for all time worked. This time-shaving
16 and/or rounding practice utilized by Defendants was not even handed over time and would
17 almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely unpaid
18 for his time worked. As a result, Defendants failed to pay Plaintiff all required minimum and
19 overtime wages.

20 11. Further, during his employment with Defendants, Plaintiff often worked in excess
21 of eight hours per workday and/or forty hours per workweek, but did not receive proper overtime
22 compensation equal to one and one-half time his regular rate of pay for all overtime hours
23 worked. Specifically, Defendants paid Plaintiff production bonuses and/or other forms of pay
24 not properly excludable as a matter of law when calculating Plaintiff's regular rate of pay
25 (hereinafter referred to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to
26 Plaintiff, Defendants failed to include the Incentive Pay when calculating his regular rate of pay
27 for purposes of overtime, thereby causing Plaintiff to be underpaid for all his required overtime
28 wages.

1 12. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided
2 with all required meal periods in compliance with California law due to Defendants' unlawful
3 meal period policies/practices. Specifically, Defendants used a bell to signify the start of a meal
4 period at 11:30 a.m. and the stop of a meal period at 12:00 p.m. Defendants' meal period policies
5 and/or practices resulted in systematically late, short and/or otherwise unlawful meal periods. In
6 addition, Defendants' meal period policies and/or practices coupled with its timekeeping policies
7 and/or practices failed to provide Plaintiff and other non-exempt employees with timely meal
8 periods in violation of California law. Further, Defendants' meal period policies and practices
9 fail to provide Plaintiff and other hourly, non-exempt employees a second meal period for shifts
10 over 10.0 hours. As a result, when Plaintiff worked in excess of 10.0 hours, he was not provided
11 with a second duty-free 30-minute meal period in violation of California law.

12 13. Although Plaintiff was not provided with all legally-compliant meal periods to
13 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
14 premium for each workday in which he experienced a meal period violation as mandated by
15 Labor Code § 226.7. Upon information and belief during at least a portion of the class period,
16 Defendants maintained no payroll code or other mechanism for the payment of meal period
17 premium payments under Labor Code § 226.7 in the event that a legally compliant meal period
18 was not provided to Plaintiff and their non-exempt employees.

19 14. Plaintiff was also not authorized and permitted to take all legally required paid
20 rest periods due to Defendants' unlawful rest period policies and practices. Specifically,
21 Defendants maintained unlawful rest period policies and practices and failed to authorize and
22 permit Plaintiff and other hourly, non-exempt employees take a third rest period when they
23 worked shifts in excess of 10.0 hours. Accordingly, Defendants' rest period policies and
24 practices fail to authorize and permit duty-free rest periods for every four hours worked, *or major*
25 *fraction thereof*.

26 15. Although Plaintiff was not provided with all legally-compliant rest periods to
27 which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
28 premium for each workday in which he experienced a rest period violation as mandated by Labor

Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Plaintiff and their non-exempt employees.

16. As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

CLASS ACTION ALLEGATIONS

17. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies/practices, during the four years preceding the filing of the lawsuit through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight hours per day and/or forty hours per week, were subjected to Defendants' timekeeping policies and practices during the four years immediately preceding the filing of the lawsuit through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees who worked at least one shift in excess of 5.0 hours and/or at least one shift in excess of 10 hours, during the four years immediately preceding the filing of the lawsuit through the present.
- d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours and/or at least one shift in excess of 10 hours, during the four years immediately preceding the filing of the lawsuit through the present.
- e. The Waiting Time Penalty Class consists of Defendants' formerly employed

members of the: (i) Minimum Wage Class; (ii) Overtime Class; (ii) Meal Period Class; and/or (iv) Rest Period Class, during the three years immediately preceding the filing of the lawsuit through the present.

f. The Wage Statement Class consists of members of the (i) Minimum Wage Class; (ii) Overtime Class; (ii) Meal Period Class; and/or (iv) Rest Period Class, during the one year immediately preceding the filing of the lawsuit through the present.

g. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Waiting Time Penalty Class; and (vi) Wage Statement Class, during the four years immediately preceding the filing of the lawsuit through the present.

18. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages, overtime wages, overtime wages at the correct regular rate of pay and/or paid for all hours worked to members of the Minimum Wage Class and Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- 1 iii. Whether Defendants authorized and permitted all legally compliant rest periods
2 to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
3 iv. Whether Defendants’ policies and/or practices for the timing and amount of
4 payment of final wages to members of the Waiting Time Class at the time of their
5 separation of employment were lawful;
6 v. Whether Defendants provided accurate, itemized wage statements to members of
7 the Wage Statement Class pursuant to Labor Code 226; and
8 vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive
9 business practices by and through the wage and hour policies and practices
10 described above, and whether as a result Defendants owe the classes restitution.

11 21. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
14 and/or practices applicable to each individual class member, such as Defendants’ uniform
15 timekeeping, minimum wage payment, overtime wage payment, and meal and rest period
16 policies/practices. As such, the common questions predominate over individual questions
17 concerning each individual class member’s showing as to their eligibility for recovery or as to
18 the amount of their damages.

19 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
20 Plaintiff was employed by Defendants as a non-exempt employee in California during the
21 statute(s) of limitations period applicable to each cause of action pled in the lawsuit. As alleged
22 herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum
23 and overtime wages, was not provided with all required meal periods, was not authorized and
24 permitted to take all required rest periods, did not receive meal and rest period premium wages
25 when he was not provided compliant meal and rest periods, was not paid all final wages due
26 upon separation of employment, and was not provided with accurate, itemized wage statements.

27 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
28 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,

Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

24. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 16 are maintainable as a Class under § 382 of the

1 Code of Civil Procedure.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

4 **(AGAINST ALL DEFENDANTS)**

5 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
6 though fully set forth herein.

7 26. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194, 1197
8 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for
9 all hours worked, and provide a private right of action for the failure to pay all minimum wage
10 compensation for all work performed.

11 27. At all times relevant herein, Defendants were required to properly compensate
12 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to
13 California Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4
14 requires an employer to pay to every employee on the established payday for the period involved
15 not less than the applicable minimum wage for all hours worked in the payroll period.
16 Defendants caused Plaintiff and the members of the Minimum Wage Class to work hours in a
17 workweek but did not properly compensate Plaintiff and the members of the Minimum Wage
18 Class at least minimum wages for such hours.

19 28. At all times relevant herein, Defendants lacked good faith and had no reasonable
20 grounds for believing that their practices in failing to pay all minimum wages owed at the
21 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
22 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing
23 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
24 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
25 Labor Code § 1194.2.

26 29. The foregoing practices and policies are unlawful and create entitlement to
27 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the
28 unpaid amount of minimum wages owing, including interest thereon, as well as statutory

penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order 1, Section 3 require an employer to pay an employee "one and one-half (1½) times the regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 1, Section 3 also require an employer to pay an employee double the employee's regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours.

33. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

1 according to California Labor Code §§ 226.7, 516, 558, Wage Order 1, California Code of Civil
2 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

5 **(AGAINST ALL DEFENDANTS)**

6 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
7 though fully set forth herein.

8 42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
9 an employer to pay all wages immediately at the time of separation of employment in the event
10 the employer discharges the employee or the employee provides at least 72 hours of notice of
11 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
12 to quit, said employee's wages become due and payable not later than 72 hours upon said
13 employee's last date of employment.

14 43. Defendants failed to timely pay Plaintiff all of his final wages at the time of
15 termination, which include, among other things, underpaid minimum and overtime wages and
16 meal period and rest period premium wages. Further, Plaintiff is informed and believes, and
17 based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to
18 fail to pay members of the Waiting Time Penalty Class all earned wages at the end of
19 employment in a timely manner pursuant to the requirements of Labor Code §§ 201-
20 203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code §
21 203.

22 44. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
23 Time Penalty Class their earned wages upon separation from employment results in a continued
24 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff
25 and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor
26 Code § 203, plus reasonable attorneys' fees and costs of suit.

27 //

28 **SIXTH CAUSE OF ACTION**

1 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**
2 **(AGAINST ALL DEFENDANTS)**

3 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
4 though fully set forth herein.

5 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
7 and the Wage Statement Class Members with accurate, itemized wage statements that included
8 among other requirements, accurate total gross wages earned, meal and rest period premiums,
9 and total net wages earned in violation of Labor Code § 226 *et seq.*

10 47. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
11 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
12 failures led to, among other things, accurate total gross wages earned, meal and rest period
13 premiums, and total net wages earned in violation of Labor Code § 226 *et seq.*

14 48. Defendants' failures created an entitlement to Plaintiff and members of the Wage
15 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
16 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to
17 suit pursuant to Labor Code § 226 *et seq.*

18 **SEVENTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **(AGAINST ALL DEFENDANTS)**

21 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs as
22 though fully set forth herein.

23 50. Defendants have engaged and continue to engage in unfair and/or unlawful
24 business practices in California in violation of California Business and Professions Code § 17200
25 *et seq.*, by failing to properly pay all minimum and overtime wages, failing to provide all required
26 meal periods and failing to authorize and permit all required rest periods, and failing to pay meal
27 and rest period premium wage payments.

28 51. Defendants' utilization of these unfair and/or unlawful business practices

1 deprived Plaintiff and continues to deprive members of the Classes of compensation to which
2 they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair
3 advantage over Defendants' competitors who have been and/or are currently employing workers
4 and attempting to do so in honest compliance with applicable wage and hour laws.

5 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct
6 alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full
7 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
8 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
9 and 17208.

10 53. The acts complained of herein occurred within the last four years immediately
11 preceding the filing of the lawsuit in this action.

12 54. Plaintiff was compelled to retain the services of counsel to file this court action
13 to protect his interests and those of the Classes, to obtain restitution and injunctive relief on
14 behalf of Defendants' current commission-paid employees, and to enforce important rights
15 affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees
16 and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

17 **EIGHTH CAUSE OF ACTION**

18 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

19 **(AGAINST ALL DEFENDANTS)**

20 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 56. Defendants have committed several Labor Code violations against Plaintiff and
22 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
23 § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
24 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
25 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
26 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
27 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
28 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus

1 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
2 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
3 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
4 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
5 for each subsequent violation per employee per pay period for those violations of the Labor Code
6 for which no civil penalty is specifically provided, based on the following Labor Code violations:

- 7 a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
8 pay Plaintiff and other aggrieved employees all overtime compensation earned;
- 9 b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay
10 Plaintiff and other aggrieved employees the statutory minimum wage for all
11 hours worked;
- 12 c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide
13 all legally required meal periods and failing to pay meal period premiums to
14 Plaintiff and other aggrieved employees;
- 15 d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide
16 all legally required rest periods and failing to pay rest period premiums to
17 Plaintiff and other aggrieved employees;
- 18 e) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay
19 all final wages due to Plaintiff and other aggrieved employees;
- 20 f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
21 aggrieved employees with accurate and compliant itemized wage statements;
- 22 g) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
23 aggrieved employees all earned wages at least twice during each calendar
24 month; and
- 25 h) Defendants violated Labor Code § 1174 by failing to maintain accurate records
26 on behalf of Plaintiff and other aggrieved employees.

27 57. On February 8, 2021, Plaintiff notified Defendants via certified mail, and the
28 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’

violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 56 (a)-(h). Attached hereto as **Exhibit A** is a true and correct copy of the February 8, 2021 correspondence. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for waiting time penalties pursuant to Labor Code § 203;

1 9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant
2 to Labor Code § 226 *et seq.*;

3 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
4 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts
5 or practices declared by this Court to be in violation of Business and Professions Code § 17200
6 *et seq.*;

7 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
8 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
9 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
10 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
11 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
12 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for
13 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)
14 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
15 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and
16 \$200.00 for each subsequent violation per employee per pay period for those violations of the
17 Labor Code for which no civil penalty is specifically provided, based on the Labor Code
18 violations cited in Paragraph 56 (a)-(h) above;

19 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
20 Code § 218.6 and Civil Code §§ 3287 and 3289;

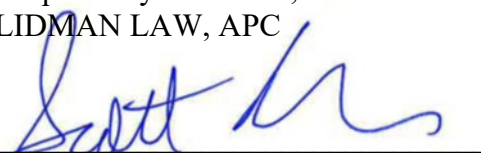
21 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

23 14. For such other and further relief the Court may deem just and proper.

24 Dated: June 23, 2021

Respectfully submitted,
LIDMAN LAW, APC

25
26 By:



Scott M. Lidman
Attorneys for Plaintiff
ANDRES PAYAN

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: June 23, 2021

By:

Scott M. Lidman
Attorneys for Plaintiff
ANDRES PAYAN

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

February 8, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Aircraft Component Repair, Inc.
c/o Christine Meyerstein, Agent for Service of
Process
501 Country Club Lane
Coronado, CA 92118

**VIA U.S. CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

Aircraft Component Repair, Inc.
25058 Anza Drive
Valencia, CA 91355

Re: *Andres Payan v. Aircraft Component Repair, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Andres Payan in claims arising from his employment with Aircraft Component Repair, Inc., a California corporation (“Defendant”). Mr. Payan is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Payan intends to pursue a lawsuit on behalf of other “aggrieved employees”, which should be considered to include all current and former hourly employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Payan, a former employee, was employed by Defendant as an hourly, non-exempt employee from approximately November 1990 through on or about August 27, 2020. Mr. Payan worked at Defendant’s facility located in Santa Clarita, California as a Machine Operator.

During his employment with Defendant, Mr. Payan was generally scheduled to work Monday through Saturday, from approximately 5:00 a.m. to approximately 4:00 p.m. Throughout Mr. Payan’s employment with Defendant, Defendant’s policies and/or practices would be to keep track of Mr. Payan’s time worked by having him clock in and out on a timecard and Defendant’s policies and/or practices would be to unlawfully shave and/or round Mr. Payan’s work time such that Mr. Payan would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendant was not even handed over time and would almost exclusively round and shave in Defendant’s favor such that Mr. Payan was routinely unpaid for his time worked. As a result, Defendant failed to pay Mr. Payan all required minimum and overtime wages.

Further, during his employment with Defendant, Mr. Payan often worked in excess of eight hours per workday and/or forty hours per workweek, but did not receive proper overtime compensation equal to one and one-half time his regular rate of pay for all overtime hours worked. Specifically, Defendant paid Mr. Payan production bonuses and/or other forms of pay not properly excludable as a matter of law when calculating Mr. Payan's regular rate of pay (hereinafter referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Payan, Defendant failed to include the Incentive Pay when calculating his regular rate of pay for purposes of overtime, thereby causing Mr. Payan to be underpaid for all his required overtime wages.

Throughout Mr. Payan's employment with Defendant, Mr. Payan was not provided with all required meal periods in compliance with California law due to Defendant's unlawful meal period policies/practices. Specifically, Defendant used a bell to signify the start of a meal period at 11:30 a.m. and the stop of a meal period at 12:00 p.m. Defendant's meal period policies and/or practices resulted in systematically late, short and/or otherwise unlawful meal periods. In addition, Defendant's meal period policies and/or practices coupled with its timekeeping policies and/or practices failed to provide Mr. Payan and other non-exempt employees with timely meal periods in violation of California law. Further, Defendant's meal period policies and practices fail to provide Mr. Payan and other hourly, non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Payan worked in excess of 10.0 hours, he was not provided with a second duty-free 30-minute meal period in violation of California law.

Although Mr. Payan was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Payan with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Payan and their non-exempt employees.

Mr. Payan was also not authorized and permitted to take all legally required paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, Defendant maintained unlawful rest period policies and practices and failed to authorize and permit Mr. Payan and other hourly, non-exempt employees take a third rest period when they worked shifts in excess of 10.0 hours. Accordingly, Defendant's rest period policies and practices fail to authorize and permit duty-free rest periods for every four hours worked, or major fraction thereof.

Although Mr. Payan was not provided with all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Payan with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to Mr. Payan and their non-exempt employees.

As a result of Defendant's failure to pay all minimum wages, overtime wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Payan.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Minimum Wage Violations

Defendant was required to pay Mr. Payan and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Payan and other aggrieved employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, Defendant caused Mr. Payan and other aggrieved employees to work hours in a workweek but did not properly compensate Mr. Payan and other aggrieved employees at least minimum wages for all such hours, due to Defendant's unlawful timekeeping practices of rounding and/or shaving Mr. Payan's time worked. This practice by Defendant resulted in Defendant not paying Mr. Payan for all wages owed for the work he performed, including failing to pay him all required minimum wages.

Overtime Violations

Defendant was required to pay Mr. Payan and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "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." This Section further provides, "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 equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Defendant had a policy/practice of shaving Mr. Payan's work time and/or rounding Mr. Payan's work time such that he was not fully paid for all time worked. As detailed above, for at least a portion of the time period relevant to his claims, Mr. Payan received non-discretionary year-end bonuses, and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Payan, Defendant failed to include all forms of Incentive Pay when calculating Mr. Payan's regular rate of pay, thereby causing Mr. Payan to be underpaid all of his required overtime wages. Rather, Mr. Payan was only paid one and a half times (or two times in the case of double-time hours) his base hourly rate, which was not equal to his regular rate, as Defendant failed to include the various forms of Incentive Pay earned during corresponding time periods that were required to be included in the regular rate. As a result of these policies/practices, Mr. Payan and other aggrieved employees were not compensated for all overtime wages on occasions when they worked over eight hours in a workday and/or 40 hours in a workweek.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Payan and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As described above, as a result of the bell signaling system utilized by Defendant, Defendant provided late, short, or otherwise unlawful meal periods to Mr. Payan and its non-exempt employees. As a result, Mr. Payan and other aggrieved employees are owed an additional hour of wages at their regular rate of

compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although Mr. Payan was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Payan and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Payan and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. Specifically, Mr. Payan worked shifts in excess of 3.5 hours, but was never provided with a paid rest period for every 4-hour period worked, or major fraction thereof. As a result, Mr. Payan and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Payan and other similarly aggrieved employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant’s failure to pay all final wages due to Mr. Payan and similarly aggrieved employees was willful and, consequently, entitles Mr. Payan and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Payan and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total gross wages earned, total net wages earned, and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendant’s failure to furnish Mr. Payan and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant’s reported data.

As an “aggrieved employee,” Mr. Payan will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage

and hour violations alleged herein. Based on Mr. Payan's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Payan and other aggrieved employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Payan and other aggrieved employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Payan and other aggrieved employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Payan and other aggrieved employees;
- e) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Payan and other aggrieved employees;
- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Payan and other aggrieved employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code § 204 by failing to pay Mr. Payan and other aggrieved employees all earned wages at least twice during each calendar month; and
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Payan and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On June 23, 2021, I served the foregoing document(s) described as:
FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT on the interested party(ies) in this action as follows:

JACKSON LEWIS P.C.

Chad Bernard, Esq. (bernardc@jacksonlewis.com)
Zoe Tremayne, Esq. (zoe.tremayne@jacksonlewis.com)
725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017
Phone: (213) 689-0404
Fax: (213) 689-0430
Representing: Aircraft Component Repair, Inc.

(BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically served via Case Anywhere on counsel of record at the electronic service address(es) listed above.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 23, 2021, at El Segundo, California.



Dana Joudi