

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

APR 01 2021

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

Farzad Rastegar (State Bar No. 155555)
farzad@rastegarlawgroup.com
Thomas S. Campbell (State Bar No. 199014)
tom@rastegarlawgroup.com
RASTEGAR LAW GROUP, APC
22760 Hawthorne Blvd., Suite 200
Torrance, California 90505
Telephone: (310) 961-9600
Facsimile: (310) 961-9094

Attorneys for PLAINTIFF Eric Hernandez,
individually, and on behalf of all similarly situated
current and former employees of Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ERIC HERNANDEZ, individually, and on)
behalf of all other similarly situated)
current and former employees of)
Defendants,)

Plaintiff,

vs.

CASTLE & COOKE AVIATION)
SERVICES, INC.; and DOES 1 through)
10, inclusive,)

Defendants)

CLASS ACTION COMPLAINT FOR:

1. Failure to provide meal periods;
2. Failure to provide rest breaks;
3. Failure to pay minimum and straight time wages;
4. Failure to pay overtime compensation;
5. Failure to reimburse all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties;
6. Failure to timely pay wages due upon termination of employment;
7. Failure to provide accurate statements and maintain required records;
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
9. Representative Action for Civil Penalties pursuant to the Private Attorneys General Act [Cal. Lab. Code §§ 2698-2699.5]

DEMAND FOR JURY TRIAL

1 PLAINTIFF ERIC HERNANDEZ ("PLAINTIFF"), on behalf of himself and all
2 other similarly situated current and former employees of CASTLE & COOKE
3 AVIATION SERVICES, INC. ("DEFENDANT"), complains and alleges as follows:

4 **INTRODUCTION & GENERAL ALLEGATIONS**

5 1. PLAINTIFF brings this action against DEFENDANT and DOES 1 through
6 10 (hereinafter also collectively referred to as "DEFENDANTS") for California Labor
7 Code violations stemming from DEFENDANTS' failure to provide meal periods, failure
8 to provide all net, 10-minute rest periods, failure to reimburse its employees for expenses,
9 failure to pay for all hours worked, including minimum wage, straight time, and overtime
10 pay, failure to timely pay all wages due to terminated employees, and failure to furnish
11 accurate itemized wage statements and maintain required records, failure to reimburse all
12 necessary business expenditures or losses incurred by the employee in direct consequence
13 of the discharge of his or her duties in accordance with California Labor Code §§
14 201-204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.1, 1197, 2802 and the 2001
15 Industrial Welfare Commission ("IWC") Order.

16 2. PLAINTIFF brings his Causes of Action individually and as a class action
17 on behalf of himself and certain current and former employees of DEFENDANTS
18 (hereinafter collectively referred to as "PLAINTIFFS" or "the Class," and defined more
19 fully below).

20 3. PLAINTIFF and the Class are current and former non-exempt employees of
21 DEFENDANTS that worked for DEFENDANTS in the State of California, for a period
22 of time within the four (4) years preceding the filing of this action.

23 4. PLAINTIFF is a resident of California. At all relevant times herein,
24 PLAINTIFF was employed by DEFENDANTS in the State of California, as a
25 non-exempt, hourly employee.

26 5. Throughout the time period involved in this case, DEFENDANTS have
27 wrongfully failed to provide PLAINTIFF and the Class with timely, adequate and
28 duty-free meal periods. DEFENDANTS regularly required PLAINTIFF and the Class to

1 work in excess of five consecutive hours a day without providing a 30-minute, continuous
2 and uninterrupted, meal period for every five hours of work, or without compensating
3 PLAINTIFF and the Class for meal periods that were not provided by the end of the fifth
4 hour of work or tenth hour of work. DEFENDANTS did not inform PLAINTIFF and the
5 Class of their right to take a meal period by the end of the fifth hour of work. Also,
6 DEFENDANTS did not inform PLAINTIFF and the Class of their right to take a second
7 meal break for shifts longer than 10 hours. DEFENDANTS did not inform PLAINTIFF
8 and the Class of their right, for shifts of more than 10 hours, to take a second meal break
9 by the end of the 10th hour. Moreover, DEFENDANTS did not have legally compliant
10 policies or practices providing adequate and duty-free meal periods for PLAINTIFF and
11 the Class, nor did DEFENDANTS have legally compliant policies or practices regarding
12 the timing of meal periods. DEFENDANTS also did not have any policies or practices to
13 record whether the PLAINTIFF and the Class were taking their required meal periods as
14 required by the 2001 IWC Wage Order. Indeed, DEFENDANTS instituted a policy of
15 auto-deducting a 30-minute lunch break without providing or recording that a lunch had
16 actually been taken.

17 6. Throughout the time period involved in this case, DEFENDANTS have
18 wrongfully failed to authorize and permit PLAINTIFF and the Class to take timely and
19 duty-free 10 minute rest periods. DEFENDANTS regularly required PLAINTIFF and the
20 Class to work in excess of four consecutive hours a day without DEFENDANTS
21 authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest
22 period for every four hours of work (or major fraction of four hours), or without
23 compensating PLAINTIFF and the Class for rest periods that were not authorized or
24 permitted. DEFENDANTS did not properly inform PLAINTIFF and the Class of their
25 right to take a 10 minute rest period every four hours of work (or major fraction of four
26 hours). Moreover, DEFENDANTS did not have legally compliant policies or practices
27 permitting or authorizing timely rest periods for PLAINTIFF and the Class.

28 ///

1 DEFENDANTS also did not have any policies or practices to verify whether PLAINTIFF
2 and the Class were receiving their required rest periods.

3 7. Throughout the time period involved in this case, DEFENDANTS
4 maintained a policy and practice of requiring PLAINTIFF and the Class to perform work
5 "off-the-clock" that was not compensated. This "off-the-clock" work regularly occurred,
6 among other things, as a result of DEFENDANTS requiring PLAINTIFF and the class
7 members to punch out of work and remain working and through unlawful rounding
8 policies and practices. DEFENDANTS did not pay PLAINTIFF and the Class for this
9 work time, and some of this time should have been paid at the overtime and double time
10 rate.

11 8. DEFENDANTS willfully failed and refused to timely pay PLAINTIFF and
12 the Class at the conclusion of their employment for the conduct mentioned above with
13 respect to meal periods, rest periods, overtime and "off-the-clock" work. As a result,
14 DEFENDANTS violated California Labor Code §§ 201-203.

15 9. DEFENDANTS willfully failed and refused to timely pay PLAINTIFF and
16 the Class all necessary business expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties, including personal cell phones, tools
18 and mileage. As a result, DEFENDANTS violated California Labor Code § 2802.

19 10. DEFENDANTS, as a matter of practice and policy, did not furnish
20 PLAINTIFF and the Class with accurate itemized wage statement that accurately show
21 total hours worked by PLAINTIFF and the Class, gross wages earned, net wages earned,
22 and other information required by Labor Code § 226(a), as well as failing to record meal
23 periods as required by the 2001 IWC Wage Order. DEFENDANTS knowingly and
24 intentionally failed to do so because, among other things, the wage statements did not
25 accurately state the total hours worked, the overtime rates, the gross wages earned, and
26 the net wages earned. As a result of these violations of Section 226(a), PLAINTIFF and
27 the Class suffered injury because, among other things: (a) the violations led them to
28 believe that they were not entitled to be paid daily minimum wages, overtime wages, meal

1 period premium wages, and rest period premium wages, even though they were entitled;
2 (b) the violations led them to believe that they had been paid the minimum, overtime,
3 meal period premium, and rest period premium wages to which they were entitled, even
4 though they had not been; (c) the violations led them to believe they were not entitled to
5 be paid minimum, overtime, meal period premium, and rest period premium wages at the
6 correct California rate even though they were; (d) the violations led them to believe they
7 had been paid minimum, overtime, meal period premium, and rest period premium wages
8 at the correct California rate even though they had not been; (e) the violations hindered
9 them from determining the amounts of minimum, overtime, meal period premium, and
10 rest period premium wages owed to them; (f) in connection with their employment before
11 and during this action, and in connection with prosecuting this action, the violations
12 caused them to have to perform mathematical computations to determine the amounts of
13 wages owed to them, computations they would not have to make if the wage statements
14 contained the required accurate information; (g) by understating the wages truly due
15 them, the violations caused them to lose entitlement and/or accrual of the full amount of
16 Social Security, disability, unemployment, and other governmental benefits; (h) the wage
17 statements inaccurately understated the wages, hours, and wages rates to which
18 PLAINTIFF and the Class were entitled, and PLAINTIFF and the Class were paid less
19 than the wages and wage rates to which they were entitled. Thus, PLAINTIFF and the
20 Class are owed the amounts provided for in Labor Code § 226(e).

21 THE PARTIES TO EACH CAUSE OF ACTION

22 A. PLAINTIFF

23 11. PLAINTIFF resides in the State of California. PLAINTIFF was employed
24 by Defendant CASTLE & COOKE AVIATION SERVICES, INC. as an hourly-paid,
25 non-exempt employee in California from approximately September 2018 to April 24,
26 2020.

27 12. PLAINTIFF reserves the right to seek leave to amend this complaint to
28 add new PLAINTIFFs, if necessary, in order to establish suitable representative(s)

1 pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872,
2 and other applicable law.

3 **B. Defendants**

4 13. PLAINTIFF is informed and believes, and based upon that information and
5 belief allege, that DEFENDANT is a California corporation authorized to conduct
6 business, and actually conducting business, in the State of California. DEFENDANT was
7 the employer of PLAINTIFF and the current and/or former employer of the Class,
8 including both permanent and temporary employees.

9 14. PLAINTIFF does not know the true names or capacities of the persons or
10 entities sued herein as DOES 1-10, inclusive, and therefore sues said DEFENDANTS by
11 such fictitious names. Each of the DOE Defendants was in some manner legally
12 responsible for the damages suffered by PLAINTIFF and the Class as alleged herein.
13 PLAINTIFF will amend this complaint to set forth the true names and capacities of these
14 Defendants when they have been ascertained, together with appropriate charging
15 allegations, as may be necessary.

16 15. At all times mentioned herein, the Defendants named as DOES 1-50,
17 inclusive, and each of them, were residents of, doing business in, availed themselves of
18 the jurisdiction of, and/or injured a significant number of the PLAINTIFF and Class in
19 the State of California.

20 16. PLAINTIFF is informed and believes and thereon alleges that at all relevant
21 times each Defendant, directly or indirectly, or through agents or other persons, employed
22 PLAINTIFF and the other employees described in the class definitions below, and
23 exercised control over their wages, hours, and working conditions. PLAINTIFF are
24 informed and believe and thereon allege that, at all relevant times, each Defendant was
25 the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
26 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
27 interest of some or all of the other Defendants, and was engaged with some or all of the
28 other Defendants in a joint enterprise for profit, and bore such other relationships to some

1 or all of the other Defendants so as to be liable for their conduct with respect to the
2 matters alleged below. PLAINTIFF is informed and believes and thereon alleges that
3 each Defendant acted pursuant to and within the scope of the relationships alleged above,
4 that each Defendant knew or should have known about, and authorized, ratified, adopted,
5 approved, controlled, aided and abetted the conduct of all other Defendants.

6 17. DEFENDANT and DOES 1-10 are collectively referred to herein as
7 "DEFENDANTS."

8 CLASS ACTION ALLEGATIONS

9 18. PLAINTIFF brings this action individually, as well as on behalf of each and
10 all other persons similarly situated, and thus, seek class certification under California
11 Code of Civil Procedure § 382.

12 19. All claims alleged herein arise under California law for which PLAINTIFF
13 seeks relief authorized by California law.

14 20. The proposed Class is defined as:

15 All persons employed by Defendants to work in any non-exempt hourly paid
16 job position in California at any time beginning four years before the filing of
17 the initial complaint in this action and ending when notice to the Class is sent.
18 For purposes of this definition, "Defendants" means CASTLE & COOKE
19 AVIATION SERVICES, INC. and any of the fictitiously named defendants
20 (Does 1 through 10).

21 21. PLAINTIFF reserves the right to establish other sub-classes as appropriate.

22 22. At all material times, PLAINTIFF was a member of the Class.

23 23. PLAINTIFF undertakes this action for the benefit of all Class members.

24 24. There is a well-defined community of interest in the litigation and the Class
25 is readily ascertainable:

26 (a) Numerosity: The members of the Class (and each subclass, if any) are so
27 numerous that joinder of all members would be unfeasible and impractical. The
28 membership of the entire Class is unknown to PLAINTIFF at this time, however, the

1 Class is estimated to be greater than 100 individuals and the identity of such membership
2 is readily ascertainable by inspection of Defendants' records.

3 (b) Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
4 protect the interests of each Class member with whom there is a shared, well-defined
5 community of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all
6 Class members' claims as demonstrated herein.

7 (c) Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
8 protect the interests of each Class member with whom there is a shared, well-defined
9 community of interest and typicality of claims, as demonstrated herein. PLAINTIFF has
10 no conflicts with or interests antagonistic to any Class member. PLAINTIFF's attorneys,
11 the proposed class counsel, are versed in the rules governing class action discovery,
12 certification, and settlement. PLAINTIFF has incurred, and throughout the duration of
13 this action, will continue to incur costs and attorneys' fees that have been, are, and will be
14 necessarily expended for the prosecution of this action for the substantial benefit of each
15 class member.

16 (d) Superiority: A Class Action is superior to other available methods for the
17 fair and efficient adjudication of the controversy, including consideration of:

18 1) The interests of the members of the Class in individually controlling the
19 prosecution or defense of separate actions;

20 2) The extent and nature of any litigation concerning the controversy already
21 commenced by or against members of the Class;

22 3) The desirability or undesirability of concentrating the litigation of the
23 claims in the particular forum; and

24 4) The difficulties likely to be encountered in the management of a class
25 action.

26 (e) Public Policy Considerations: Employers in the State of California violate
27 employment and labor laws every day. Current employees are often afraid to assert their
28 rights out of fear of direct or indirect retaliation. Former employees are fearful of

1 bringing actions because they believe their former employers might damage their future
2 endeavors through negative references and/or other means. Class actions provide the
3 class members who are not named in the complaint with a type of anonymity that allows
4 for the vindication of their rights at the same time as their privacy is protected.

5 25. There are common questions of law and fact as to the Class (and each
6 subclass, if any) that predominate over questions affecting only individual members,
7 including without limitation, whether, as alleged herein, DEFENDANTS have:

8 (a) Failed to provide meal periods and pay meal period premium wages to
9 Class members;

10 (b) Failed to authorize and permit rest periods and pay rest period premium
11 wages to Class members;

12 (c) Failed to pay Class members for all hours worked, including minimum
13 wages, straight time wages, and overtime wages;

14 (d) Failed to reimburse PLAINTIFF and Class Members for all necessary
15 business expenditures or losses incurred by the employee in direct consequence of the
16 discharge of PLAINTIFF'S and the Class Members duties.

17 (e) Failed to promptly pay all wages due to Class members upon their discharge
18 or resignation;

19 (f) Failed to provide Class members with accurate wages statements;

20 26. This Court should permit this action to be maintained as a class action
21 pursuant to California Code of Civil Procedure § 382 because:

22 (a) The questions of law and fact common to the Class predominate over any
23 question affecting only individual members;

24 (b) A class action is superior to any other available method for the fair and
25 efficient adjudication of the claims of the members of the Class;

26 (c) The members of the Class are so numerous that it is impractical to bring all
27 members of the class before the Court;

28 ///

1 (d) PLAINTIFF, and the other members of the Class, will not be able to obtain
2 effective and economic legal redress unless the action is maintained as a class action;

3 (e) There is a community of interest in obtaining appropriate legal and
4 equitable relief for the statutory violations, and in obtaining adequate compensation for
5 the damages and injuries for which DEFENDANTS are responsible in an amount
6 sufficient to adequately compensate the members of the Class for the injuries sustained;

7 (f) Without class certification, the prosecution of separate actions by individual
8 members of the class would create a risk of:

9 1) Inconsistent or varying adjudications with respect to individual members of
10 the Class which would establish incompatible standards of conduct for DEFENDANTS;
11 and/or

12 2) Adjudications with respect to the individual members which would, as a
13 practical matter, be dispositive of the interests of other members not parties to the
14 adjudications, or would substantially impair or impede their ability to protect their
15 interests, including but not limited to the potential for exhausting the funds available from
16 those parties who are, or may be, responsible DEFENDANTS; and,

17 (g) DEFENDANTS have acted or refused to act on grounds generally
18 applicable to the Class, thereby making final injunctive relief appropriate with respect to
19 the class as a whole.

20 27. PLAINTIFF contemplates the eventual issuance of notice to the proposed
21 members of the Class that would set forth the subject and nature of the instant action.
22 The DEFENDANTS' own business records may be utilized for assistance in the
23 preparation and issuance of the contemplated notices. To the extent that any further
24 notices may be required, PLAINTIFF would contemplate the use of additional techniques
25 and forms commonly used in class actions, such as published notice, e-mail notice,
26 website notice, first-class mail, or combinations thereof, or by other methods suitable to
27 the Class and deemed necessary and/or appropriate by the Court.

28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Against All Defendants for Failure to Provide Meal Periods)**

3 **[Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order No. 1-2001]**

4 28. PLAINTIFF incorporates by reference and re-alleges as if fully stated
5 herein the material allegations set out in this Complaint.

6 29. Under California law, DEFENDANTS have an affirmative obligation to
7 relieve the PLAINTIFF and the Class of all duty in order to take their first daily meal
8 periods no later than fifth hour of work in a workday, and to take their second meal
9 periods no later than the tenth hour of work in the workday.

10 30. Despite these legal requirements, DEFENDANTS regularly failed to
11 provide PLAINTIFF and the Class with both meal periods as required by California law.

12 31. Under California law, PLAINTIFF and the Class are entitled to be paid one
13 hour of additional wages for each instance he or she was not provided with all required
14 meal period(s).

15 32. DEFENDANTS regularly failed to pay PLAINTIFF and the Class the
16 additional wages to which they were entitled for meal periods and that were not provided.

17 33. As a result, DEFENDANTS are liable to PLAINTIFF and the Class for one
18 hour of additional wages for each work day for a meal period that was not provided.

19 34. By failing to keep adequate time records required by Labor Code § 1174(d),
20 DEFENDANTS have made it difficult to calculate the full extent of meal period premium
21 wage compensation due to PLAINTIFF and the Class Members.

22 35. California Labor Code section 204 requires employers to provide
23 employees with all wages due and payable twice a month. Throughout the statute of
24 limitations period applicable to this cause of action, PLAINTIFF and the Class were
25 entitled to be paid twice a month at rates required by law, including meal period premium
26 wages for each meal period that was not provided. However, during all such times,
27 DEFENDANTS systematically failed and refused to pay PLAINTIFF and the Class all
28 such wages due, and failed to pay those wages twice a month.

1 36. DEFENDANTS are also liable to PLAINTIFF and the Class for the civil
2 penalties provided for in Labor Code § 558 because of the violations alleged in this cause
3 of action.

4 **SECOND CAUSE OF ACTION**

5 **(Against All Defendants for Failure to Provide Rest Periods)**

6 **[Cal. Lab. Code § 226.7 and IWC Wage Order No. 1-2001]**

7 37. PLAINTIFF incorporates by reference and re-alleges as if fully stated
8 herein the material allegations set out in this Complaint.

9 38. DEFENDANTS are required by California law to authorize and permit
10 breaks of an uninterrupted, net 10-minutes for each four hours of work or major fraction
11 of four hours (i.e. more than two hours). That is, the required number of rest breaks is
12 equal to the number of work hours divided by four, and if the work time is not evenly
13 divided by four, if the remaining fractional part is two hours or less it is rounded down,
14 and if it is more than two hours, it is rounded up. Thus, for example, if an employee's
15 work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. If the
16 work time is nine hours, the employee is still entitled to only two rest breaks. Each
17 failure to authorize rest breaks as so required is itself a violation of California's rest break
18 laws.

19 39. Despite these legal requirements, DEFENDANTS failed to authorize
20 PLAINTIFF and the Class to take all timely, net, 10-minute rest breaks owed to them,
21 regardless of whether employees worked more than 4 hours in a workday.

22 40. Under California law, PLAINTIFF and the Class are entitled to be paid one
23 hour of premium wages rate for each instance he or she was not provided with all
24 required rest break(s).

25 41. DEFENDANTS regularly failed to pay PLAINTIFF and the Class the
26 additional wages to which they were entitled for rest breaks DEFENDANTS failed
27 authorize and permit. As a result, DEFENDANTS are liable to PLAINTIFF and the

28 ///

1 Class for one hour of additional wages for each work day when they did not receive a rest
2 break.

3 42. California Labor Code section 204 requires employers to provide
4 employees with all wages due and payable twice a month. Throughout the statute of
5 limitations period applicable to this cause of action, PLAINTIFF and the Class were
6 entitled to be paid twice a month at rates required by law, including rest break premium
7 wages for each rest break that was not authorized and permitted. However, during all
8 such times, DEFENDANTS systematically failed and refused to pay PLAINTIFF and the
9 Class all such wages due, and failed to pay those wages twice a month.

10 43. DEFENDANTS are also liable to PLAINTIFF and the Class for the civil
11 penalties provided for in Labor Code § 558 because of the violations alleged in this cause
12 of action.

13 **THIRD CAUSE OF ACTION**

14 **(Against all Defendants for Failure to Pay Minimum and Straight Time Wages)**

15 **[Cal. Lab. Code §§ 204 and 1194, and IWC Wage Order]**

16 44. PLAINTIFF incorporates by reference and re-alleges as if fully stated
17 herein the material allegations set out in this Complaint.

18 45. At all relevant times herein mentioned, DEFENDANTS knowingly failed to
19 pay to PLAINTIFF and the other members of the Class compensation for all hours they
20 worked. "Hours worked" is the time during which an employee is subject to the control
21 of an employer, and includes all the time the employee is suffered or permitted to work,
22 whether or not required to do so.

23 46. Accordingly, PLAINTIFF and the other members of the Class are entitled
24 to recover straight time wages for all non-overtime hours worked for DEFENDANTS.

25 47. By and through the conduct described above, the PLAINTIFF and the other
26 members of the Class, have been deprived of their rights to be paid wages earned by
27 virtue of their employment with DEFENDANTS.

28 ///

1 48. By virtue of the DEFENDANTS' unlawful failure to pay additional
2 compensation to the Class for their non-overtime hours worked without pay, the Class has
3 suffered, and will continue to suffer, damages in amounts which are presently unknown to
4 the Class, but which exceed the jurisdictional minimum of this Court, and which will be
5 ascertained according to proof at trial.

6 49. By failing to keep adequate time records required by Labor Code § 1174(d),
7 DEFENDANTS have made it difficult to calculate the full extent of compensation due
8 PLAINTIFF and the Class Members.

9 50. Pursuant to California Labor Code section 1194.2, PLAINTIFF and the
10 Class are entitled to recover liquidated damages (double damages) for DEFENDANTS'
11 failure to pay minimum wages.

12 51. California Labor Code section 204 requires employers to provide
13 employees with all wages due and payable twice a month. Throughout the statute of
14 limitations period applicable to this cause of action, PLAINTIFF and the Class members
15 were entitled to be paid twice a month at rates required by law, including minimum wages
16 and straight time wages. However, during all such times, DEFENDANTS systematically
17 failed and refused to pay PLAINTIFF and the Class members all such wages due, and
18 failed to pay those wages twice a month.

19 52. PLAINTIFF and the Class are also entitled to seek recovery of all unpaid
20 wages, interest, and reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§
21 218.5 and 218.6.

22 53. DEFENDANTS are also liable to the Class for the civil penalties provided
23 for in Labor Code § 558, because of the violations alleged in this cause of action.

24 **FOURTH CAUSE OF ACTION**

25 **(Against all Defendants for Failure to Pay Overtime Wages)**

26 **[Cal. Lab. Code §§ 510, 1194 and 1198, and IWC Wage Order No. 1-2001]**

27 54. PLAINTIFF incorporates by reference and re-alleges as if fully stated
28 herein the material allegations set out in this Complaint.

1 55. California Labor Code § 510 provides that employees in California shall not
2 be employed more than eight (8) hours in any workday or forty (40) hours in a workweek
3 unless they receive additional compensation beyond their regular wages in amounts
4 specified by law.

5 56. California Labor Code §§ 1194 and 1198 provide that employees in
6 California shall not be employed more than eight hours in any workday unless they
7 receive additional compensation beyond their regular wages in amounts specified by law.
8 Additionally, California Labor Code § 1198 states that the employment of an employee
9 for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

10 57. At all times relevant hereto, PLAINTIFF, and the members of the Class,
11 have worked more than eight, and at times more than twelve, hours in a workday, as
12 employees of DEFENDANTS. Further, at all times relevant hereto, PLAINTIFF, and the
13 members of the Class, have been paid on an hourly basis.

14 58. At all times relevant hereto, DEFENDANTS failed to pay the PLAINTIFF,
15 and the other members of the Class, overtime compensation for the hours they have
16 worked in excess of the maximum hours permissible by law as required by California
17 Labor Code § 510 and 1198, by among other things, failing to properly implement an
18 effective alternative work-week schedule. PLAINTIFF and the other members of the
19 Class are regularly required to work overtime hours. By virtue of DEFENDANTS'
20 unlawful failure to pay additional, premium rate compensation to the PLAINTIFF, and
21 the other members of the Class, for their overtime hours worked, the PLAINTIFF, and the
22 other members of the Class, have suffered, and will continue to suffer, damages in
23 amounts which are presently unknown to them but which exceed the jurisdictional
24 minimum of this Court and which will be ascertained according to proof at trial.

25 59. By failing to keep adequate time records required by Labor Code § 1174(d),
26 DEFENDANTS have made it difficult to calculate the full extent of overtime
27 compensation due PLAINTIFF and the Class Members.

28 ///

60. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, PLAINTIFF and the Class members were entitled to be paid twice a month at rates required by law, including overtime wages. However, during all such times, DEFENDANTS systematically failed and refused to pay PLAINTIFF and the Class members all such wages due, and failed to pay those wages twice a month.

FIFTH CAUSE OF ACTION

62. PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. . . .

///

1 Interest shall accrue from the date on which the employee incurred the
2 necessary expenditure or loss.

3 (c) For purposes of this section, the term "necessary expenditures or losses"
4 shall include all reasonable costs, including, but not limited to, attorney's
5 fees incurred by the employee enforcing the rights granted by this section.

6 64. During the relevant time period, DEFENDANTS failed, and continue to fail
7 to reimburse PLAINTIFF and the Class members for all necessary expenditures or losses
8 incurred by the employee in direct consequence of the discharge of his or her duties.

9 65. DEFENDANTS' failure to reimburse PLAINTIFF and the Class members
10 for among other thing personal cell phone usage and mileage is in violation of California
11 Labor Code § 2802.

12 66. PLAINTIFF and Class members are entitled to recover reimbursement from
13 DEFENDANTS, interest and attorney's fees pursuant to Labor Code § 2802.

14 **SIXTH CAUSE OF ACTION**

15 **(Against all Defendants for Failure to Timely Pay All Wages Due**
16 **to Discharged or Terminated Employees)**

17 **[Cal. Lab. Code §§ 201 - 204, and IWC Wage Order No.I-2001]**

18 67. PLAINTIFF incorporates by reference and re-alleges as if fully stated
19 herein the material allegations set out in this Complaint.

20 68. At all times herein set forth, California Labor Code §§ 201 and 202 provide
21 that if an employer discharges an employee, the wages earned and unpaid at the time of
22 discharge are due and payable immediately, and that if an employee voluntarily leaves his
23 or her employment, his or her wages shall become due and payable not later than
24 seventy-two (72) hours thereafter,
25 unless the employee has given seventy-two (72) hours previous notice of his or her
26 intention to quit, in which case the employee is entitled to his or her wages at the time of
27 quitting.

28 ///

69. Within the applicable statute of limitations, the employment of PLAINTIFF and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, DEFENDANTS failed, and continue to fail to pay PLAINTIFF and terminated Class members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ.

70. DEFENDANTS' failure to pay PLAINTIFF and those Class members who are no longer employed by DEFENDANTS their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ, is in violation of California Labor Code §§ 201 and 202.

71. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

72. PLAINTIFF and Class members are entitled to recover from DEFENDANTS their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to California Labor Code § 203.

SEVENTH CAUSE OF ACTION

**(Against all Defendants for Failure to Provide Accurate Statements
and Maintain Required Records)**

[Cal. Lab. Code § 226, and IWC Wage Order No. 1-2001]

73. PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

74. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate

1 itemized wage statement in writing showing nine pieces of information, including: (1)
2 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
3 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4)
4 all deductions, provided that all deductions made on written orders of the employee may
5 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
6 period for which the employee is paid, (7) the name of the employee and the last four
7 digits of his or her social security number or an employee identification number other
8 than a social security number, (8) the name and address of the legal entity that is the
9 employer, and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.

11 75. DEFENDANTS have intentionally and willfully failed to provide
12 employees with complete and accurate wage statements. The deficiencies include, among
13 other things, the failure to correctly identify the gross wages earned by PLAINTIFF and
14 the members of the Class, the failure to list the true "total hours worked by the employee,"
15 the failure to list the true net wages earned, and the failure to list the name and address of
16 the legal entity(s) that employ PLAINTIFF and the Class.

17 76. As a result of DEFENDANTS' violation of California Labor Code § 226(a),
18 PLAINTIFF and the members of the Class have suffered injury and damage to their
19 statutorily-protected rights.

20 77. Specifically, PLAINTIFF and the members of the Class have been injured
21 by DEFENDANTS' intentional violation of California Labor Code § 226(a) because they
22 were denied both their legal right to receive, and their protected interest in receiving,
23 accurate, itemized wage statements under California Labor Code § 226(a).

24 78. Calculation of the true wage entitlement for PLAINTIFF and the Class is
25 difficult and time consuming. As a result of this unlawful burden, PLAINTIFF was also
26 injured as a result of having to bring this action to attempt to obtain correct wage
27 information following DEFENDANTS' refusal to comply with many of the mandates of
28 California's Labor Code and related laws and regulations.

79. PLAINTIFF and Class members are entitled to recover from DEFENDANTS the greater of their actual damages caused by DEFENDANTS' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

80. PLAINTIFF and the members of the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g).

EIGHTH CAUSE OF ACTION

**(Against all Defendants for Violation of California Business &
Professions Code §§ I7200, et seq.)**

81. PLAINTIFF incorporates by reference and re-alleges as if fully stated herein the material allegations and Causes of Action set out in this Complaint.

82. DEFENDANTS, and each of them, are "persons" as defined under Business & Professions Code § 17201.

83. DEFENDANTS' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to PLAINTIFF, other Class members, and to the general public. PLAINTIFF seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

84. DEFENDANTS' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, et seq.

85. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business and Professions Code §§ 17200, et seq.

///

1 **Failing to Provide Meal Periods**

2 86. DEFENDANTS' failure to provide meal periods in accordance with Labor
3 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes
4 unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et
5 seq.

6 **Failing to Authorize and Permit Rest Periods**

7 87. DEFENDANTS' failure to authorize and permit rest periods in accordance
8 with Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes
9 unlawful and/or
10 unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

11 **Failing to Pay Minimum and Straight Time Wages**

12 88. DEFENDANTS' failure to pay minimum and straight time wages
13 constitutes unlawful and/or unfair activity prohibited by Business and Professions Code
14 §§ 17200, et seq.

15 **Failure to Pay Overtime**

16 89. DEFENDANTS' failure to pay overtime compensation, reimbursement and
17 other benefits in violation of Cal. Labor Code §§ 510, 1197, 1198 and 2802 constitutes
18 unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, *et*
19 *seq.*

20 90. DEFENDANTS' failure to provide accurate itemized wage statements in
21 accordance with Labor Code § 226, as alleged above, constitutes unlawful and/or unfair
22 activity prohibited by Business and Professions Code §§ 17200, et seq.

23 91. By and through their unfair, unlawful and/or fraudulent business practices
24 described herein, the DEFENDANTS, have obtained valuable property, money and
25 services from PLAINTIFF, and all persons similarly situated, and have deprived
26 PLAINTIFF, and all persons similarly situated, of valuable rights and benefits guaranteed
27 by law, all to their detriment.

28 ///

1 92. PLAINTIFF and the other Class members suffered monetary injury as a
2 direct result of DEFENDANTS' wrongful conduct.

3 93. The PLAINTIFF, individually, and on behalf of members of the putative
4 Class, is entitled to, and does, seek such relief as may be necessary to disgorge money
5 and/or property which the DEFENDANTS have wrongfully acquired, or of which
6 PLAINTIFF has been deprived, by means of the above-described unfair, unlawful and/or
7 fraudulent business practices. PLAINTIFF and the members of the putative Class are not
8 obligated to establish individual knowledge of the wrongful practices of DEFENDANTS
9 in order to recover restitution.

10 94. The PLAINTIFF, individually, and on behalf of members of the putative
11 class, is further entitled to and does seek a declaration that the above described business
12 practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the
13 DEFENDANTS, and each of them, from engaging in any of the above-described unfair,
14 unlawful and/or fraudulent business practices in the future.

15 95. The PLAINTIFF, individually, and on behalf of members of the putative
16 class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which
17 the Class members suffered as a consequence of the DEFENDANTS' unfair, unlawful
18 and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent
19 business practices described above, the PLAINTIFF, individually, and on behalf of
20 members of the putative Class, has suffered and will continue to suffer irreparable harm
21 unless the DEFENDANTS, and each of them, are restrained from continuing to engage in
22 said unfair, unlawful and/or fraudulent business practices.

23 96. The PLAINTIFF also alleges that if DEFENDANTS are not enjoined from
24 the conduct set forth herein above, they will continue to avoid paying the appropriate
25 taxes, insurance and other withholdings.

26 97. Pursuant to California Business & Professions Code §§ 17200, et seq.,
27 PLAINTIFF and putative Class members are entitled to restitution of the wages withheld
28 and retained by DEFENDANTS during a period that commences four years prior to the

1 filing of this complaint; a permanent injunction requiring DEFENDANTS to pay all
2 outstanding wages due to PLAINTIFF and Class members; an award of attorneys' fees
3 pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and
4 an award of costs.

5 **NINTH CAUSE OF ACTION**

6 **(Representative Action Against all Defendants pursuant to the Private** 7 **Attorneys General Act, Cal. Lab. Code §§ 2698, et seq.)**

8 98. Plaintiffs incorporates by reference and re-alleges as if fully stated herein
9 the material allegations and Causes of Action set out in this Complaint. Labor Code §
10 2699(a) specifically provides for a private right of action to recover penalties for
11 violations of the Labor Code: "Notwithstanding any other provision of law, any provision
12 of this code that provides for a civil penalty to be assessed and collected by the Labor and
13 Workforce Development Agency or any of its departments, divisions, commissions,
14 boards, agencies, or employees, for a violation of this code, may, as an alternative, be
15 recovered through a civil action brought by an aggrieved employee on behalf of himself
16 or herself and other current and former employees."

17 99. This action is appropriately suited for a Representative Action because:

18 A. The individuals that Plaintiffs seeks to represent are a significant
19 number. Joinder of all current and former employees individually would be impractical.

20 B. This action involves common questions of law and fact to the
21 potential representative group because the action focuses on the DEFENDANTS'
22 systematic course of illegal payroll practices and policies, which was applied to all hourly
23 employees in violation of the California Labor Code, and the California Business and
24 Professions Code which prohibits unfair business practices arising from such violations.

25 C. The claims of the Plaintiffs are typical of the representative group
26 because DEFENDANTS subjected all of their hourly employees to the identical
27 violations of the California Labor Code and California Business and Professions Code.

28 ///

D. The Plaintiffs is able to fairly and adequately protect the interests of all members of the representative group because it is in the Plaintiffs' best interest to prosecute the claims alleged herein to collect civil penalties due to Plaintiffs arising from DEFENDANTS' illegal wage and hour violations.

100. Plaintiffs has complied with the requirements set forth in California Labor Code §2699.3.

101. Pursuant to California Labor Code §§ 2698-2699.5, the CLASS is entitled to collect civil penalties from DEFENDANTS in a representative action for the California Labor Code violations set forth above.

PRAYER FOR RELIEF

PLAINTIFF, individually, and on behalf of all others similarly situated, pray for relief and judgment against DEFENDANTS, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That PLAINTIFF be appointed as the representative of the Class; and
3. That counsel for PLAINTIFF be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
5. For general unpaid wages and such general and special damages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For reasonable attorneys' fees and for costs of suit incurred herein; and
8. For such other and further relief as the Court may deem equitable and appropriate.

///

///

1 **As to the Second Cause of Action**

2 9. That the Court declare, adjudge and decree that DEFENDANTS violated
3 Labor Code § 226.7 and the IWC Wage Orders;

4 10. For general unpaid wages and such general and special damages as may be
5 appropriate;

6 11. For pre-judgment interest on any unpaid compensation commencing from
7 the date such amounts were due;

8 12. For reasonable attorneys' fees and for costs of suit incurred herein; and

9 13. For such other and further relief as the Court may deem equitable and
10 appropriate

11 **As to the Third Cause of Action**

12 14. That the Court declare, adjudge and decree that DEFENDANTS violated
13 Labor Code § 204 and 1194;

14 15. For general unpaid wages and such general and special damages as may be
15 appropriate;

16 16. For pre-judgment interest on any unpaid compensation commencing from
17 the date such amounts were due;

18 17. For liquidated damages;

19 18. For reasonable attorneys' fees and for costs of suit incurred herein; and

20 19. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fourth Cause of Action**

23 20. That the Court declare, adjudge and decree that DEFENDANTS violated
24 California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully
25 failing to pay all overtime wages due to PLAINTIFF and Class members;

26 21. For general unpaid wages at overtime wage rates and such general and
27 special damages as may be appropriate;

28 ///

1 22. For pre-judgment interest on any unpaid overtime compensation
2 commencing from the date such amounts were due;

3 23. For reasonable attorneys' fees and for costs of suit incurred herein pursuant
4 to California Labor Code § 1194(a); and,

5 24. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Fifth Cause of Action**

8 25. That the Court declare, adjudge and decree that DEFENDANTS violated
9 California Labor Code § 2802 by failing to indemnify his or her employee for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of his or her duties;

12 26. For all actual, consequential and incidental losses and damages, according
13 to proof;

14 27. For pre-judgment interest on any unpaid wages from the date such amounts
15 were due;

16 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

17 29. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Sixth Cause of Action**

20 30. That the Court declare, adjudge and decree that DEFENDANTS violated
21 California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation
22 owed at the time of termination of the employment of PLAINTIFF and other terminated
23 class members;

24 31. For all actual, consequential and incidental losses and damages, according
25 to proof;

26 32. For statutory wage penalties pursuant to California Labor Code § 203 for
27 PLAINTIFF and all other class members who have left DEFENDANTS' employ;

28 ///

1 33. For pre-judgment interest on any unpaid wages from the date such amounts
2 were due;

3 34. For reasonable attorneys' fees and for costs of suit incurred herein; and

4 35. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Seventh Cause of Action**

7 36. That the Court declare, adjudge and decree that DEFENDANTS violated
8 the record keeping provisions of California Labor Code § 226(a) and applicable IWC
9 Wage Orders as to PLAINTIFF and class members, and willfully failed to provide
10 accurate itemized wage statements thereto;

11 37. For all actual, consequential and incidental losses and damages, according
12 to proof;

13 38. For statutory penalties pursuant to California Labor Code § 226(e);

14 39. For injunctive relief to ensure compliance with this section, pursuant to
15 California Labor Code § 226(g);

16 40. For reasonable attorneys' fees and for costs of suit incurred herein; and

17 41. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Eighth Cause of Action**

20 42. That the Court declare, adjudge and decree that DEFENDANTS violated
21 California Business and Professions Code §§ 17200, et seq. by failing to provide
22 PLAINTIFF and class members with meal periods, failing to authorize and permit
23 required rest periods, failing to provide all compensation due to them, failing to provide
24 accurate itemized wage statements, and failing to pay PLAINTIFF' and class members'
25 wages timely as required by California Labor Code §§ 201, 202 and 203;

26 43. For restitution of unpaid wages to PLAINTIFF and all class members and
27 prejudgment interest from the day such amounts were due and payable;

28 ///

1 44. For the appointment of a receiver to receive, manage and distribute any and
2 all funds disgorged from DEFENDANTS and determined to have been wrongfully
3 acquired by DEFENDANTS as a result of violations of California Business &
4 Professions Code §§ 17200 et seq.;

5 45. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
6 California Code of Civil Procedure § 1021.5;

7 46. For injunctive relief to ensure compliance with this section, pursuant to
8 California Business & Professions Code § 17200, et seq.; and,

9 47. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Ninth Cause of Action**

12 48. That the Court find that PLAINTIFF is an aggrieved employee under
13 California Labor Code §§ 2698, *et seq.* and that PLAINTIFF is an adequate representative
14 of all similarly aggrieved employees and may represent the State of California in
15 collecting civil penalties from DEFENDANT for its failure to provide meal periods,
16 failure to authorize and permit rest periods, failure to pay for all hours worked (including
17 minimum wages and overtime wages), failure to timely pay wages to temporary service
18 employees, failure to pay all wages at termination, failure to properly reimburse the
19 aggrieved employees and for failing to furnish accurate wage statements;

20 49. For all civil penalties pursuant to California Labor Code §§ 2698, *et seq.*,
21 and all other applicable Labor Code provisions;

22 50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Labor Code § 2699;

24 51. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 ///

27 ///

28 ///

1 **As to all Causes of Action**

2 53. For any additional relief that the Court deems just and proper.

3 Dated: March 30, 2021

Respectfully submitted,

4 RASTEGAR LAW GROUP, APC

5
6 By: Thomas S. Campbell
7 Farzad Rastegar
8 Thomas S. Campbell
9 Attorneys for Eric Hernandez
10 individually, and all other similarly
11 situated employees of Defendants
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Dated: March 30, 2021

RASTEGAR LAW GROUP, APC

Thomas S. Carylbell
Farzan Rastegar

Farzad Rastegar
Thomas S. Campbell
Attorneys for Eric Hernandez
individually, and all other similarly
situated employees of Defendants