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10 Attorneys for Plaintiffs,

11 JAIME RENE FELIX AND ROBERT ESTUPESOLIS

12 **IN THE SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

14 JAIME RENE FELIX, an individual and
15 ROBERT ESTUPESOLIS, an individual,

16 Plaintiffs,

17 vs.

18 AMERIT FLEET SOLUTIONS, INC., a
19 California corporation and DOES 1 through 20
20 inclusive,

21 Defendants.

Case No. **21STCV27144**

**COMPLAINT AND ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT**

22 1. Plaintiffs JAIME RENE FELIX and ROBERT ESTUPESOLIS are informed and
23 believe and thereon allege as follows:

24 **PARTIES, VENUE AND JURISDICTION**

25 2. Plaintiffs JAIME RENE FELIX and ROBERT ESTUPESOLIS were at all relevant times
26 residents of Palmdale, California.

27 3. At all relevant times herein, Defendant AMERIT FLEET SOLUTIONS, INC. was a
28 California Corporation with its principal place of business in Sylmar, California.

4. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 23 2021

Sherril R. Carter, Executive Officer/Clerk of Court

1 because this suit was filed in the county where the liability arises, where the breach occurred and
2 where Defendants' resided at the commencement of this action.

3 5. Plaintiffs are informed and believe, and based thereon allege, that there exists such a
4 unity of interest and ownership between AMERIT FLEET SOLUTIONS, INC. and DOES 1-20 that
5 the individuality and separateness of defendants have ceased to exist.

6 6. Plaintiffs are informed and believe, and based thereon allege, that despite the formation
7 of purported corporate existence, AMERIT FLEET SOLUTIONS, INC. and DOES 1-20 are, in
8 reality, one and the same.

9 7. AMERIT FLEET SOLUTIONS, INC. and DOES 1-20 do not comply with all requisite
10 corporate formalities to maintain a legal and separate existence.

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

21 9. Accordingly, AMERIT FLEET SOLUTIONS, INC. and DOES 1-20 are the alter egos
22 of one another, and the fiction of their separate corporate existence must be disregarded.

23 10. As a result of the aforementioned facts, Plaintiffs are informed and believe, and based
24 thereon allege that AMERIT FLEET SOLUTIONS, INC. and DOES 1-20 are joint employers by
25 virtue of a joint enterprise, and that the employees and agents of AMERIT FLEET SOLUTIONS,
26 INC. were also employees of and DOES 1-20. AMERIT FLEET SOLUTIONS, INC. employees
27 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
28 and all Defendants shared control of them as employees, either directly or indirectly, and the manner

1 in which Defendants' business was and is conducted.

2 11. Plaintiffs are informed and believe and based thereupon allege, that at all times relevant
3 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
4 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant, and
5 each of them, and in doing the things alleged herein, were acting at least in part within the course and
6 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or
7 joint venture and with the permission and consent of each of the other Defendant.

8 12. Plaintiffs are informed and believe and based thereupon allege, that Defendant,
9 including those defendants named as DOES 1-20 acted in concert with one another to commit the
10 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
11 wrongful acts alleged herein, and/or attempted to do so. Plaintiffs are further informed and believe,
12 and based thereupon allege, that Defendant, including those defendants named as DOES 1-20 formed
13 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
14 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
15 intended to cause and actually causing Plaintiffs' harm.

16 13. The true names and capacities, whether individual, corporate, the associate, or
17 otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiffs at this
18 time and therefore these Defendants are sued by such fictitious names. Plaintiffs will seek leave to
19 amend this Complaint to insert the true names and capacities of these Defendants when they become
20 known to Plaintiffs. Plaintiffs are informed and believe and based thereupon alleges, that each of the
21 fictitiously named Defendants are responsible for the wrongful acts alleged herein and are therefore
22 liable to Plaintiffs as alleged hereinafter.

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

26 **FACTUAL ALLEGATIONS**

27 15. Plaintiff ROBERT ESTUPESOLIS was employed as a fleet mechanic at Amerit Fleet
28 Solutions, Inc. from February 28, 2014 to November 27, 2020.

1 16. Plaintiff JAIME RENE FELIX was employed as a fleet mechanic at Amerit Fleet
2 Solutions, Inc. from February 13, 2019 to November 27, 2020.

3 17. Defendant AMERIT FLEET SOLUTIONS, INC provides on-site workforce solutions
4 to various companies by supplying the customer with Amerit Fleet mechanics to service and repair
5 the customer's diesel truck fleet. The fleet mechanics work fulltime onsite at the customer's facility,
6 servicing and repairing the customer's fleet of vehicles.

7 18. During their employment, Plaintiffs worked at a Frito Lays location in Sylmar,
8 servicing their fleet of diesel trucks and trailers. They were the only two Ameri Fleet mechanics who
9 are assigned to that location. This particular location had a toolbox with some tools, but not the type
10 that are used to service the trucks they work on.

11 19. There was no break room or posters displaying employee labor rights, and both were
12 unaware of their right to take 10-minute rest periods until the latter part of their employment. As such,
13 they did not take them during their employment.

14 20. During their employment Plaintiffs worked from 11:00 a.m. to 8:30 p.m. Monday to
15 Friday.

16 21. From January 1, 2020 to November 27, 2020, Plaintiff ROBERT ESTUPESOLIS was
17 paid .40 cents below double minimum wage, \$25.60 per hour.

18 22. From February 13, 2019 to November 27, 2020, Plaintiff JAIME RENE FELIX was
19 paid two dollars below double minimum wage, \$24 per hour.

20 **Failure to Reimburse for Business Expenditures**

21 23. In October 2020, Plaintiffs' Fleet Manager Daniel Burrola came to the Frito Lay
22 location to investigate complaints that they made about the lack of tools in the toolbox provided by
23 AMERIT FLEET SOLUTIONS, INC. Mr. Burrola took photos of the tools. Plaintiffs informed Mr.
24 Burrola that they were no longer going to put wear and tear on their own tools because they weren't
25 being paid double minimum wage, which is required by IWC Wage Order 4-2001 § 9 (B). Plaintiff
26 JAIME RENE FELIX told him that if the shop box did not have the tool to do a job, he was going to
27 have to leave the diesel truck out of service until the appropriate tools were provided. After this
28 meeting, Plaintiff JAIME RENE FELIX had to put a truck out of service because he did not have the

1 appropriate right-angle drill to service a truck. Rather than purchase the tool, Defendant allowed the
2 truck to remain out of service for one week until another Amerit Fleet technician, Michael Arellano,
3 came to the shop to repair it. After this incident, Plaintiff JAIME RENE FELIX had a phone
4 conversation with Cynthia from Human Resources wherein he told her that he was not going to be
5 using his own tools if he was not going to be paid double minimum wage. She told him that she did
6 not recommend that he do that, which he interpreted as a threat. Within one month, Frito Lay's
7 contract with Defendant apparently terminated, and Plaintiffs were hired directly by Frito Lay.

8 24. At all times relevant herein, all technicians and mechanics employed by Defendants
9 were required to supply their own tools to perform their job duties because it failed to supply them
10 with a sufficient quantity at their work locations. Most locations either have no toolbox at all, or if
11 there is one, is not stocked with all tools necessary to perform their jobs. As such, technicians and
12 mechanics are required to incur thousands of dollars in tool expenditures, which Defendants have not
13 reimbursed. Defendants' practice of failing to reimburse non-double minimum wage-earning
14 mechanics and technicians for the purchase of their hand tools and equipment is violation of Labor
15 Code § 2802.

16 25. Plaintiff ROBERT ESTUPESOLIS incurred approximately \$7,000 in tool purchases
17 for tools he used to perform his job duties with Defendants.

18 26. Plaintiff JAIME RENE FELIX incurred approximately \$15,000 to \$20,000 in tool
19 purchases for tools he used to perform his job duties with Defendants.

20 **Failure to Pay Minimum Wage**

21 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and other aggrieved employees were entitled to receive at least
23 minimum wages for compensation and that they were not receiving at least minimum wages for work
24 that was required to be done off-the-clock. In violation of the Labor Code, Plaintiffs and other
25 aggrieved employees were not paid at least minimum wages for work done off-the-clock.

26 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and other aggrieved employees were entitled to meal periods in
28 accordance with the Labor Code or payment of one additional hour of pay at their regular rates of

1 pay when they were not provided with timely, uninterrupted, 30 minute meal periods and that
2 Plaintiffs and other aggrieved employees were not provided with all meal periods or payment of one
3 additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted,
4 30 minute meal period.

5 29. Due to Respondent's company-wide scheduling practices and policies, employees
6 were forced to forego meal periods and/or have their meal periods interrupted by work, and were not
7 relieved of all duties for unpaid meal periods, in order to meet their deadlines and handle their
8 workloads. Defendants did not pay minimum wages for the time they continued to perform their
9 duties during their meal periods.

10 30. Respondent had no policy and/or practice for scheduling second meal periods for
11 employees or for authorizing and permitting employees to take second 30-minute meal periods on
12 days they worked in excess of 10 hours in one day. As a result, Respondent did not provide employees
13 with all second 30-minute meal periods to which they were entitled.

14 31. To the extent that the off-the-clock hours worked by employees did not qualify for
15 overtime premium payment, Respondent did not pay at least minimum wages for those hours
16 employees worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198. Accordingly, Respondent regularly failed to pay at least minimum wages to
18 employees for all of the hours they worked. Respondent's failure to pay employees minimum wages
19 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

20 **Failure to Provide Uninterrupted Rest Periods**

21 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and other aggrieved employees were entitled to 10 minute rest
23 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
24 additional hour of pay at their regular rates of pay when they were not provided with a compliant 10
25 minute rest period and that Plaintiffs and other aggrieved employees were not provided compliant
26 10 minute rest periods or payment of one additional hour of pay at their regular rates of pay when
27 they were not provided a compliant 10 minute rest period.

28 33. Defendant's company-wide policy and practice of understaffing while simultaneously

1 assigning demanding workloads, prevented employees from being relieved of all duty in order to take
2 compliant rest periods.

3 34. Defendant also had a uniform policy of failing to schedule rest breaks. As a result,
4 employees missed their rest breaks, would be required to take them late, or would have their rest
5 breaks interrupted. Employees were prevented from being relieved of all duty in order to take
6 compliant rest periods and instead would be required to continue working.

7 35. Employees worked shifts in excess of 3 ½ hours, in excess of 6 hours, and/or in excess
8 or 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled.

9 36. Defendant has also engaged in a systematic, company-wide practice and/or policy of
10 not paying rest period premiums owed when rest periods are not authorized or permitted. Thus,
11 Defendant denied employees rest periods and failed to pay them rest period premium wages due, in
12 violation of Labor Code section 226.7 and the applicable IWC Wage Order.

13 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and other aggrieved employees were entitled to timely payment of
15 all wages earned upon termination of employment. In violation of the Labor Code, Plaintiffs and
16 other aggrieved employees did not receive payment of all wages due, including overtime wages,
17 minimum wages, and meal and rest period premiums, within the time periods required by law.

18 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other aggrieved employees were entitled to timely payment of
20 wages during their employment. Plaintiffs and other aggrieved employees did not receive payment
21 of all wages, including overtime wages, minimum wages, and meal and rest period premiums in
22 violation of the California Labor Code.

23 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other aggrieved employees were entitled to receive full
25 reimbursement for all business-related expenses and costs they incurred in direct consequence of the
26 discharge of their duties and that they did not receive full reimbursement of applicable business-
27 related expenses and costs incurred.

28 40. Plaintiffs are informed and believe, and thereon allege, that at all times herein

1 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and
2 other aggrieved employees for all hours worked, and that Defendants had the financial ability to pay
3 such compensation, but willfully, knowingly, and intentionally failed to do so.

4 **Failure to pay overtime**

5 41. Employees were not paid overtime premiums for all of the hours they worked in excess
6 of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a week. Defendant
7 had, and continues to have, a company-wide policy of failing to implement any policies to authorize
8 and permit employees to take compliant meal periods and, instead, engaged in a practice of
9 discouraging and impeding employees from taking meal periods by assigning them a heavy workload
10 and understaffing their facilities.

11 42. Additionally, Defendant, on a company-wide basis, failed to schedule meal periods
12 even though they are aware that employees are entitled to such meal periods. As a result of this
13 company-wide understaffing of its facilities and failure to schedule meal periods, Plaintiffs and
14 aggrieved employees were not always permitted and authorized to take uninterrupted 30-minute meal
15 periods during shifts to which they were entitled to receive a meal period. Plaintiffs contend that
16 employees regularly worked through meal periods and had meal periods interrupted by supervisors
17 and by work to meet expected targets.

18 43. Defendant had no policy for scheduling second meal periods and no practice of
19 permitting employees to take second 30-minute meal periods. As a result, on days that employees
20 worked in excess of 10 hours, they were not provided with second 30-minute meal periods.

21 44. Defendant knew or should have known that, as a result of its policies and practices,
22 employees were performing some of their assigned duties off-the-clock and/or during unpaid meal
23 periods, and were suffered or permitted to perform work for which they were not paid. Because
24 employees worked shifts in excess of 8 hours a day or more and 40 hours a week or more, much of
25 this off-the-clock work qualified for overtime premium pay. Therefore, employees were not paid
26 overtime wages for all of the overtime hours they actually worked. To the extent employees worked
27 shifts in excess of 12 hours a day, or in excess of 8 hours on the seventh consecutive day of a work
28 in a workweek, they were not paid double time wages for all overtime hours they actually worked.

1 45. Defendant's failure to pay employees the balance of overtime compensation, as
2 required by California law, violates the provisions of California Labor Code §§ 510 and 1198.

3 **Failure to Provide Uninterrupted Meal Periods**

4 46. Plaintiffs allege that Defendant had, and continue to have, a company-wide policy
5 and/or practice of understaffing their locations while simultaneously assigning demanding workloads,
6 which have the combined effect of preventing employees from taking all timely, uninterrupted meal
7 periods to which they were entitled. Additionally, Defendant has no policy or practice of scheduling
8 meal periods for employees. As a result of Defendant's policies and practices, employees have to
9 work through some or all of their meal periods, have their meal periods interrupted to return to work,
10 and/or wait extended periods of time before taking meal periods.

11 47. Plaintiffs further allege that Defendant does not provide employees with second
12 30-minute meal periods on days that they work in excess of 10 hours in one day.

13 48. Plaintiffs also allege that that Defendant engaged in a systematic, company-wide
14 practice and/or policy of not paying meal period premiums for employees, regardless of whether they
15 were able to take a compliant meal break, in violation of the applicable IWC Wage Order and Labor
16 Code sections 226.7 and 512 (a). As a result, Defendant fail to provide employees with compliant
17 meal periods in violation of California Labor Code sections 226.7 and 512 and failed to pay the full
18 meal period premiums due.

19 49. Plaintiffs further allege that Defendant failed to provide meal periods to employees
20 who worked shifts between five and six hours or who worked shifts between 10 and 12 hours by
21 instituting a policy and practice that assumes that all employees signed blanket prospective meal break
22 waivers.

23 50. Defendant presents the meal period waiver to employees during the new-hire
24 orientation, along with a several other documents before they ever work a single shift. And while
25 Defendant's meal break waiver form specifies that the waivers can be revoked at any time, Plaintiffs
26 allege that no employee has revoked the waiver.

27 51. Defendant's employees sign the waiver form along with various other forms during the
28 on-boarding process. The employees simply sign all the documents without understanding that they

1 are waiving their meal periods. Further, employees are not told that signing the meal break waiver is
2 optional. Thus, employees do not knowingly consent to waiving their right to all meal periods for
3 shifts that are 5-6 hours in length.

4 52. Prospective waivers signed at the time of hire, before employees have worked even a
5 single shift are invalid.

6 **Failure to furnish itemized wage statements**

7 53. As detailed above, Respondent failed to pay employees for all hours worked by virtue
8 of uncompensated time worked during missed and/or incomplete meal periods. As a result, their wage
9 statements did not accurately reflect the total hours they worked or the corresponding number of hours
10 worked at each hourly rate. This practice is in violation of Lab. Code § 226 (a).

11 **Willful failure to pay wages upon discharge**

12 54. As discussed above, Defendant's employees are owed wages for unpaid minimum
13 wage, overtime, meal periods and unreimbursed business expenses. At no time since their separation
14 of employment were these outstanding sums ever paid to them. Further, Defendant knew or should
15 have known that it owed these outstanding sums to employees and intentionally failed and refused to
16 pay these sums immediately upon their termination or within 72 hours of their resignation of
17 employment and continue to refuse to do so. This practice is in violation of Labor Code §§ 201-203.

18 **Failure to Timely Pay Wages**

19 55. As discussed above, Defendant's employees are owed wages for unpaid minimum
20 wage, overtime, meal periods and unreimbursed business expenses. At no time during their
21 employment were these outstanding sums ever paid to them. Instead, these outstanding sums
22 continued to accumulate every pay period. Therefore, Defendant's employees were not paid all wages
23 earned by the seventh calendar day following the close of their pay periods. This practice is in violation
24 of Labor Code § 204.

FIRST CAUSE OF ACTION
CIVIL PENALTIES IN VIOLATION OF
LABOR CODE § 2698, ET SEQ.
(AGAINST ALL DEFENDANTS)

56. Plaintiffs incorporate, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

57. Under Labor Code §2698, et seq., Plaintiffs, aggrieved employees, may bring an action against Defendants, on behalf of themselves and other current or former employees, seeking civil penalties for defendants' violations of the California Labor Code.

58. Plaintiffs were aggrieved employees within the meaning of Labor Code §2698, et seq. by virtue of the numerous Labor Code violations they were subjected to as plead herein.

59. Defendants also subjected the aggrieved employees on whose behalf Plaintiffs brings this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse for necessary business expenditures in violation of Labor Code § 2802, failing to pay minimum wages in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay overtime in violation Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and maintain accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide meal periods in violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code §§ 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204 and willful failure to pay wages in violation of Labor Code § 201-203.

60. On March 9, 2021, Plaintiffs provided written notice by online filing with the Labor and Workforce Development Agency and by certified mail to Defendants Amerit Fleet Solutions, Inc. of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

61. As of the filing of this Complaint, Plaintiffs have received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

62. As a direct and proximate result of Defendants' Labor Code violations as set forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for

1 the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
2 violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing
3 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
4 provide for a penalty.

5 63. Plaintiffs are also entitled to reasonable attorney's fees and costs, and 25% of the
6 recovered civil penalties.

7 **PRAYER FOR RELIEF**

8 Plaintiffs pray for relief and judgment against Defendants as follows:

9 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess
10 of \$25,000, exclusive of interest and costs.

11 2. That the Court declare, adjudge, and decree that Defendants violated all Labor Code
12 sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194,
13 1197, 1197.1, 1198 and 2802;

14 3. For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or
15 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor
16 Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

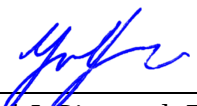
17 4. For attorneys' fees and costs pursuant to Labor Code § 2699 (g) (1), and any and all
18 other relevant statutes, for Defendants' violations of all Labor Code sections plead herein, including
19 Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

20 5. For pre-judgment and post-judgment interest as provided by law; and

21 6. For such other and further relief as the Court deems just and appropriate.

22 **PIMENTEL LAW, P.C.**

23
24 Dated: July 22, 2021

25 By: 
Gabriel J. Pimentel, Esq.
26 Yesenia L. Rodriguez, Esq.
27 Attorneys for Plaintiffs
28