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Superior Court of California,
County of San Diego

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By Keira McCray, Deputy Clerk

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

GRANT WESTBROOK, an individual, on
behalf of himself and others similarly
situated

PLAINTIFF,

v.

C.L.M.P., LTD.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 37-2021-00019187-CU-OE-
CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff GRANT WESTBROOK, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter “PAGA”),
4 complains of Defendant C.L.M.P., LTD. (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who are employed or have been employed as an hourly
10 employee by C.L.M.P., LTD., in the State of California since four
11 (4) years prior to the filing of this action to the present. (“Proposed
Class”)

12 2. For at least four (4) years prior to the filing of this action continuing to the present,
13 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
14 members when they work more than eight hours in a day or forty hours in a week. Plaintiff and
15 other Proposed Class members were not properly compensated for wages/overtime at the
16 appropriate rate of pay because Defendant required Plaintiff and the Proposed Class to wait and
17 receive a temperature check when entering Defendant’s facility. This time spent waiting was
18 “clocked out” and as such, Plaintiff and the Proposed Class were not compensated at the regular
19 rate of pay when applicable and the overtime rate when applicable.

20 3. From at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to inform Proposed Class members of
22 their right to take meal periods by way of a lawful policy and requiring Proposed Class members
23 within the State of California, including Plaintiff, to work at least five (5) hours without a meal
24 period away from the premises and failing to pay such employees one (1) hour of pay at the
25 employees’ regular rate of compensation for each workday that the meal period is not provided or
26 provided after five (5) hours and was not an off the premises meal period as required by California
27 state wage and hour laws.

4. For at least one (1) year prior to the filing of this action continuing to the present, Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001 and Labor Code § 226(a). Plaintiff and the Proposed Class are issued itemized wage statements that do not correctly show all gross wages earned or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

5. For at least four (3) years prior to the filing of this action continuing to the present, Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and the Proposed Class.

6. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in her PAGA notice letter (see Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant’s failure to provide all wages and/or overtime, failure to provide lawful meal and rest breaks, failure to provide accurate itemized wage statements, and failure to provide all wages due at the time of termination.

II.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

9. This Court has personal jurisdiction over Defendant because Defendant has caused

injuries in the County of San Diego and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of San Diego.

11. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

12. Plaintiff GRANT WESTBROOK is a resident of California.

13. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate;
- b. Work without being provided compliant meal periods where they were free to leave the premises;
- c. Work without being provided accurate itemized wage statements as required by California law.

14. Defendant willfully failed to compensate Plaintiff and all Proposed Class members for wages at the termination of their employment with Defendant;

15. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

16. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code

§2699(c.)

B. DEFENDANTS

17. Defendant C.L.M.P., LTD. is believed to be a San Diego corporation operating within the State of California. Defendant's corporate address is believed to be 1855 First Ave Suite 300, San Diego, CA 92101. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

18. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

19. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

20. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

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1 **IV.**

2 **FACTUAL BACKGROUND**

3 21. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
4 classified as non-exempt employees by Defendant. Defendant hires employees who work as
5 hourly employees and who are paid on an hourly basis.

6 22. Upon information and belief, Plaintiff and the Proposed Class are covered by
7 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
8 Code of Regs. § 11040).

9 23. On a regular and consistent basis, Plaintiff and the Proposed Class members were
10 not paid at the proper rate of compensation. Plaintiff and Proposed Class members were not
11 properly compensated at the regular rate of pay and the overtime rate of pay for hours in excess of
12 eight (8) in one day and/or forty (40) hours in one week. This was because Defendant required
13 Plaintiff and the Proposed Class to wait and receive a temperature check when entering
14 Defendant's facility. This time spent waiting was "clocked out" and as such, Plaintiff and the
15 Proposed Class were not compensated at the applicable rate of pay.

16 24. Plaintiff and all Proposed Class members have been forced by Defendant to work
17 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
18 and not being compensated one (1) hour of pay at the regular rate of compensation for each
19 workday that a meal period was not provided or provided after five (5) hours, all in violation of
20 California labor laws, regulations, and Industrial Welfare Commission Wage Orders.
21 Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take
22 meal periods by way of a lawful policy and failed to permit Plaintiff and the Proposed Class to
23 leave the premises for their meal periods.

24 25. For at least one (1) year prior to the filing of this action continuing to the present,
25 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 4-2001
26 and Labor Code § 226(a). Plaintiff and the Proposed Class are issued itemized wage statements
27 that do not correctly show all gross wages earned including meal period premiums, if any, or all
28 applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee based on Defendant's failure to compensate at the
2 regular rate of pay when applicable and the overtime rate when applicable.

3 26. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
4 Proposed Class members quit or were discharged. This failure was willful, without legal
5 justification, and interfered with Plaintiff's and Class Members' rights.

6 27. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

7 **V.**

8 **CLASS ACTION ALLEGATIONS**

9 28. Plaintiff brings this action on behalf of himself and all others similarly situated as
10 a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a
11 proposed class composed of and defined as follows:

12 All persons who are employed or have been employed as an hourly
13 employee by C.L.M.P., LTD., in the State of California since four
14 (4) years prior to the filing of this action to the present. ("Proposed
Class")

15 29. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
16 amend or modify the class description with greater specificity, by division into subclasses, or by
17 limitation to particular issues.

18 30. This action has been brought and may properly be maintained as a class action
19 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
20 community of interest in the litigation and the Proposed Classes are easily ascertainable.

21 **A. NUMEROSITY**

22 31. The potential members of the Proposed Class as defined are so numerous that
23 joinder of all the members of the Proposed Class is impracticable. While the precise number of
24 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
25 that Defendant currently employ, and during the relevant time periods employed over 50 members
26 of the Proposed Class.

27 32. Plaintiff alleges that Defendant's employment records would provide information
28 as to the number and location of all Proposed Class Members. Joinder of all members of the

Proposed Class is not practicable.

B. COMMONALITY

33. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

b. Whether Defendant violated Labor Code § 226.7, 512 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class of their right to take meal periods by way of a lawful policy, failing to provide required off-premises meal periods throughout the term of employment, and failing to compensate said employees one (1) hours wages in lieu of meal periods;

c. Whether Defendants violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to issue itemized wage statements that accurately show gross wages earned including meal period premiums, if any, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee because of Defendant's failure to compensate at the regular rate of pay when applicable and the overtime rate when applicable.

d. Whether Defendants violated § 203 of Labor Code by failing to pay compensation due and owing at the time that any Proposed Class member's employment with Defendant terminated;

e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

f. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

1 **C. TYPICALITY**

2 34. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
3 all members of the Proposed Class sustained injuries and damages arising out of and caused by
4 Defendant's common course of conduct in violation of laws, regulations that have the force and
5 effect of law, and statutes as alleged herein.

6 **D. ADEQUACY OF REPRESENTATION**

7 35. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the proposed Class.

9 36. Counsel who represent Plaintiff and the Proposed Class are competent and
10 experienced in litigating large employment class actions.

11 **E. SUPERIORITY OF CLASS ACTION**

12 37. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Proposed Class members is not
14 practicable, and questions of law and fact common to the Proposed Class predominate over any
15 questions affecting only individual members of the Proposed Class. Each member of the Proposed
16 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
17 practice of failing to pay all wages due, failing to provide meal periods, failing to provide accurate
18 itemized wage statements, and failing to pay all wages upon resignation or termination.

19 38. Class action treatment will allow those similarly situated persons to litigate their
20 claims in the manner that is most efficient and economical for the parties and the judicial system.
21 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
22 action that would preclude its maintenance as a class action.

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FOR FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

5 **LABOR CODE §§ 510, 1194, AND 1199**

6 39. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 40. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal
9 minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that
10 eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday
11 and any work in excess of 40 hours in any one workweek must be compensated at the rate of no
12 less than one and one-half times the regular rate of pay for an employee. Any work in excess of
13 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay.
14 California law also requires that any compensation, including non-discretionary bonuses, must be
15 included in the regular rate of pay.

16 41. Plaintiff and the Proposed Class were forced to work on a regular and consistent
17 basis without receiving compensation for all hours worked at the appropriate rate and Plaintiff and
18 the Proposed Class were not paid at the proper overtime rate when they were working more than
19 eight (8) hours in one day or forty (40) hours in one week.

20 42. Defendant required Plaintiff and the Proposed Class to wait and receive a
21 temperature check when entering Defendant's facility. This time spent waiting was "clocked out"
22 and as such, Plaintiff and the Proposed Class were not compensated at the applicable rate of pay.
23 As such, Plaintiff and the Proposed Class were paid at a regular rate less than the rate required
24 under California law for all work in excess of eight (8) hours in a workday and/or forty (40) hours
25 in a workweek.

26 43. By their policy of requiring Plaintiff and members of the Proposed Class to work
27 off the clock and their failure to include non-discretionary compensation when calculating the
28 regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2

1 and 1199.

2 44. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
3 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
4 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
5 costs.

6 **VII.**

7 **SECOND CAUSE OF ACTION**

8 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

9 **FOR FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

10 **LABOR CODE § 226.7 AND LABOR CODE § 512**

11 45. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
12 by reference all previous paragraphs.

13 46. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
14 compensation for each meal period the employer fails to provide. Employees are entitled to a first
15 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
16 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
17 over ten (10) hours.

18 47. Employees must be permitted to leave the premises for their meal periods.

19 48. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
20 these rights.

21 49. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

22 50. Defendant required Plaintiff and all members of the Proposed Class to remain on
23 Defendant's premises for all meal periods.

24 51. Pursuant to Labor Code § 226.7, Plaintiff and the Class are entitled to damages in
25 an amount equal to one (1) hour of wages per missed or late meal break, per day in a sum to be
26 proven at trial.

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1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FOR VIOLATION OF LABOR CODE § 226(A)**

5 52. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 53. As a result of Defendant's failure to pay Plaintiff and the Proposed Class at the
8 proper regular rate of pay as described above, Defendant violated Labor Code § 226(a) by failing
9 to provide accurate itemized wage statements.

10 54. Labor Code § 226(a)(1) requires that every employer shall semimonthly or at the
11 time of each payment of wages, furnish each of his or her employees, an accurate itemized
12 statement in writing showing all gross wages earned including meal period premiums paid.

13 55. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
14 time of each payment of wages, furnish each of his or her employees, an accurate itemized
15 statement in writing showing all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 56. Defendant issues Plaintiff and the Proposed Class wage statements that do not
18 properly indicate gross wages earned or all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours worked at each hourly rate by the employee because the
20 wage statements fail to include the applicable regular and overtime rates and the number of hours
21 worked at the corresponding rate in violation of Labor Code § 226(a).

22 57. Defendants' failure to provide accurate itemized wages statements according to
23 Labor Code § 226(a) was all done on a regular and consistent basis.

24 58. An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
27 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
28 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and

1 reasonable attorneys' fees.

2 **VIII.**

3 **FOURTH CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

5 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

6 59. Plaintiff, on behalf of himself and the Proposed Class, reallege and incorporate by
7 reference all previous paragraphs.

8 60. Numerous members of the Proposed Class, including Plaintiff GRANT
9 WESTBROOK, are no longer employed by Defendant. He was either fired or quit Defendant's
10 employ.

11 61. Defendant's failure to pay wages, as alleged above was willful in that Defendant
12 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
13 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
14 penalty until paid for a period of up to thirty (30) days from the time they were due. Defendant has
15 failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two
16 (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.
17 Pursuant to the provisions of Labor Code§ 203, Plaintiff and the Proposed Class are entitled to a
18 penalty in the amount of Plaintiffs' and the Proposed Class Members' daily wage multiplied by
19 thirty (30) days.

20 **X**

21 **FIFTH CAUSE OF ACTION**

22 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

23 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

24 62. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
25 by reference all previous paragraphs.

26 63. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
27 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
28 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this

1 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
2 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
3 interest within the meaning of Code of Civil Procedure § 1021.5.

4 64. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
5 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
6 appropriate equitable relief.

7 65. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
8 practices.

9 66. California’s wage and hour laws express fundamental public policies. Providing
10 employees with proper wages and compensation are fundamental public policies of this State and
11 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
12 vigorously minimum labor standards, to ensure that employees are not required or permitted to
13 work under substandard and unlawful conditions, and to protect law-abiding employers and their
14 employees from competitors who lower their costs by failing to comply with minimum labor
15 standards.

16 67. Defendant has violated statutes and public policies as alleged herein. Through the
17 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
18 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
19 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
20 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
21 guaranteed to all employees under law.

22 68. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
23 violation of § 17200, *et seq.* of the Business & Professions Code.

24 69. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
25 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
26 § 17200, *et seq.* of the Business & Professions Code.

27 70. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
28 others similarly situated have been damaged in a sum as may be proven.

71. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

XI

SIXTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

42. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

43. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, et seq use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

44. Plaintiff brings this representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by C.L.M.P., LTD., in the State of California who worked one or more pay periods since April 29, 2020 to the present. ("aggrieved employees").

45. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

- a. For statutes that specifically provide for a civil penalty, the amount of the penalty provided for by such statute;
- b. For statutes that do not specifically provide for a civil penalty:
 - i.. \$100 for the initial violation per employee per pay period.
 - ii. \$200 for each subsequent violation per employee per pay period.

46. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

47. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant C.L.M.P., LTD.'s entity address, which is 1855 First Ave Suite 300, San Diego, CA 92101, as proscribed by the Code on April 29, 2021, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199. (*see* Exhibit "1.") Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit "2"). Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the address listed on the California's Secretary of State's website as the entity address for Defendant, which is believed to be 1855 First Ave, Suite 300, San Diego, CA 92101 (*see* Exhibit "3").

As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

1 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
2 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
3 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
4 an aggregate penalty of four thousand dollars (\$4,000);

5 4. For penalties pursuant to Labor Code §203 for all employees who were terminated
6 or resigned equal to their daily wage times thirty (30) days;

7 5. An award of prejudgment and post judgment interest;

8 6. An order enjoining Defendant and its agents, servants, and employees, and all
9 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
10 overtime, meal periods, accurate itemized wage statements, and wages upon
11 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194,
12 1194.2, 1199, and IWC 4-2001;

13 7. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
14 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1199; Wage Order 4-2001; and California
15 Code of Regulations, Title 8, Section 11040.

16 8. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

18 9. An award providing for payment of costs of suit;

19 10. An award of attorneys' fees; and

20 11. Such other and further relief as this Court may deem proper and just.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

24 DATED: July 2, 2021

KINGSLEY & KINGSLEY, APC

26 By: _____

Liane Katzenstein Ly
Attorneys for Plaintiff GRANT WESTBROOK and
the Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

April 29, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

C.L.M.P., LTD.
1855 First Ave Suite 300
San Diego, CA 92101

Re: GRANT WESTBROOK v. C.L.M.P., LTD.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents GRANT WESTBROOK (“Plaintiff”) and a proposed group of current and former employees working for C.L.M.P., LTD. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a class action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by C.L.M.P., LTD., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. Labor Code § 510(a) states that eight hours of labor constitutes a day’s work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the *regular rate of pay* for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Defendant required Plaintiff and the aggrieved employees to wait and receive a temperature check when entering Defendant’s facility. This time spent waiting was “clocked out” and as such, Plaintiff and the aggrieved employees were not compensated at the regular rate of pay when applicable and the overtime rate when applicable.

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Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendant failed to maintain a policy informing Plaintiff and the Aggrieved Employees of these rights. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Specifically, Defendant maintains an unlawful policy of requiring Plaintiff and the aggrieved employees to remain on Defendant's premises for all meal periods. As such, Defendant failed to provide Plaintiff and the aggrieved employees with compliant meal periods.

As a result of the allegations above, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all gross wages earned and applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issued Plaintiff and the aggrieved employees itemized wage statements that did not show all gross wages earned including meal period premiums, if any, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee because of Defendant's failure to compensate at the regular rate of pay when applicable and the overtime rate when applicable. Defendant has violated Labor Code § 226(a) with respect to Plaintiff and all aggrieved employees.

Labor Code section 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff are aggrieved employees and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

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LABOR & WORKFORCE DEVELOPMENT AGENCY

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Page **3** of **3**

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

LKL/gm

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. C.L.M.P., LTD. via USPS Certified Mail #7018 1130 0001 5815 0249

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Liane

Your Last Name *

Ly

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Ste 12

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

GRANT WESTBROOK

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

C.L.M.P., LTD.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

1855 FIRST AVE SUITE 300

Employer City

SAN DIEGO

Employer State

California



Employer Zip/Postal Code

92101

Employer Industry *

Other



Employer Industry for "Other" *

Asset Management

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

Child Labor – Specify Ages

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Visa

Credit Card Number *

4246315244306526

CVV Number *

825

Credit Card Expiration Month *

07

mm

Credit Card Expiration Year *

2022

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 PAGA Letter –P., LTD..pdf

Other Attachment – (if any) (must be a .pdf)

 No file chosen[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Thursday, April 29, 2021 10:53:39 AM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-830713-21

Order Number: ORD-000103917

Total:\$75.00

Card Type: Visa

Date: 4/29/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Suite 1200

Encino, California

91436

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Service Email](#)
Subject: Thank you for submission of your PAGA Case.
Date: Thursday, April 29, 2021 10:53:26 AM

4/29/2021

LWDA Case No. LWDA-CM-830713-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : GRANT WESTBROOK
Employer: C.L.M.P., LTD.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT "3"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
C.L.M.P., LTD.
1855 First Ave Suite 300
San Diego, CA 92101



9590 9402 6114 0209 6131 33

2. Article Number (Transfer from service label)

7018 1130 0001 5815 0249

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

5/1/21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS TRACKING #



9590 9402 6114 0209 6131 33



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

