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MARK RYCHLIK

Assigned for all Purposes

Judge Peter Wilson

cx-102

**IN THE SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

MARK RYCHLIK, an individual,

Plaintiff,

vs.

DAY & NITE DOORS, INC., a California  
corporation, NICHOLAS ALEXANDER,  
CHRISTY, an individual, MELANIE ANN  
CHRISTY, an individual, and DOES 1 through  
20 inclusive,

Defendants.

Case No. **30-2021-01207960-CU-OE-CXC**

**COMPLAINT FOR:**

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Pay Minimum Wage in Violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198;
3. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
4. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
5. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
6. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
7. Failure to Timely Pay Wages in Violation of Labor Code § 204;
8. Willful Failure to Pay Wages in Violation of Labor Code §§ 201-203;

9. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

10. Unfair Competition in Violation of Labor Code §§17200, et seq.

**Jury Trial Demanded**

1. Plaintiff MARK RYCHLIK is informed and believes and thereon alleges as follows:

**PARTIES, VENUE AND JURISDICTION**

2. Plaintiff MARK RYCHLIK was at all times relevant hereto a resident of San Clemente, California.

3. At all relevant times herein, Defendant DAY & NITE DOORS, INC. was a California Corporation with its principal place of business at 1577 N. Harmony Cir., Anaheim, California 92807.

4. Defendant NICHOLAS ALEXANDER CHRISTY was at all times relevant herein the principal of DAY & NITE DOORS, INC.

5. Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5 because this suit was filed in the county where the liability arises, where the breach occurred and where Defendants resided at the commencement of this action.

6. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity of interest and ownership between DAY & NITE DOORS, INC., NICHOLAS ALEXANDER CHRISTY, and DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

7. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, DAY & NITE DOORS, INC., NICHOLAS ALEXANDER CHRISTY, MELANIE ANN CHRISTY, and DOES 1-20 are, in reality, one and the same.

8. DAY & NITE DOORS, INC., NICHOLAS ALEXANDER CHRISTY, MELANIE ANN CHRISTY, and DOES 1-20 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

9. The business affairs of DAY & NITE DOORS, INC., NICHOLAS ALEXANDER CHRISTY, MELANIE ANN CHRISTY, and DOES 1-20 are, and at all times relevant were, so mixed

1 and intermingled that the same cannot reasonably be segregated, and the same are in inextricable  
2 confusion. DAY & NITE DOORS, INC. is, and at all times relevant hereto was, used by DOES 1-20  
3 and NICHOLAS ALEXANDER CHRISTY as a mere shell and conduit for the conduct of certain of  
4 Defendants' affairs, and is, and was, the alter ego of DOES 1-20. The recognition of the separate  
5 existence of DAY & NITE DOORS, INC. would not promote justice, in that it would permit Defendants  
6 to insulate themselves from liability to Plaintiff for violations of state law. The corporate existence of  
7 DAY & NITE DOORS, INC. and DOES 1-20 should be disregarded in equity and for the ends of  
8 justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

9       10.       Accordingly, DAY & NITE DOORS, INC., NICHOLAS ALEXANDER CHRISTY,  
10 MELANIE ANN CHRISTY, and DOES 1-20 are the alter egos of one another, and the fiction of their  
11 separate corporate existence must be disregarded.

12       11.       As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
13 thereon alleges that DAY & NITE DOORS, INC., NICHOLAS ALEXANDER CHRISTY, MELANIE  
14 ANN CHRISTY, and DOES 1-20 are joint employers by virtue of a joint enterprise, and that the  
15 employees and agents of DAY & NITE DOORS, INC. were also employees of NICHOLAS  
16 ALEXANDER CHRISTY and DOES 1-20. DAY & NITE DOORS, INC. employees performed  
17 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all  
18 Defendants shared control of them as employees, either directly or indirectly, and the manner in which  
19 Defendants' business was and is conducted.

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

27       13.       Plaintiff is informed and believes and based thereupon alleges, that at all times relevant  
28 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent

1 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and  
2 each of them, and in doing the things alleged herein, were acting at least in part within the course and  
3 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or  
4 joint venture and with the permission and consent of each of the other Defendants.

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

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

16 **FACTUAL ALLEGATIONS**

17 16. MARK RYCHLIK worked as a Garage Door Technician for Defendants from about  
18 February 6, 2021 to March 18, 2021.

19 17. Defendant DAY & NITE DOORS, INC. provides services that include repair and  
20 installation of commercial and residential garage doors.

21 18. During his employment, Plaintiff worked from 7:30 a.m. to 5:30 p.m., Monday to  
22 Friday. Occasionally, Plaintiff worked until 7:00 p.m.

23 **MEAL PERIODS**

24 19. Plaintiff is informed and believes, and thereon alleges, that Defendants' employees did  
25 not receive complaint meal periods.

26 20. Plaintiff is informed and believes, and thereon alleges, that Defendants' employees  
27 who worked more than a 10-hour period did not receive a second meal period.

28 21. During his employment, Plaintiff ate lunch while on route to the next jobsite.

22. During his employment, Plaintiff was instructed by Augie, a technician that was training him, that an earlier stop at 7-Eleven to purchase food would count as his lunch because Plaintiff worked slowly. Thus, Plaintiff indicated on his timesheet that he had taken a meal period.

23. During his employment, Plaintiff communicated to Augie that he had missed a meal period on the prior workday and didn't think it was appropriate. However, Augie took offense to this and told Plaintiff that he had a problem listening.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants discouraged its employees from taking all compliant meal periods that they were entitled to.

9           25.       Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
10 have known that Plaintiff was entitled to meal periods in accordance with the Labor Code or payment  
11 of one additional hour of pay at their regular rates of pay when they were not provided with timely,  
12 uninterrupted, 30 minute meal periods and that Plaintiff and aggrieved employees members were not  
13 provided with all meal periods or payment of one additional hour of pay at their regular rates of pay  
14 when they did not receive a timely, uninterrupted, 30 minute meal period.

## REST PERIODS

16           26.       During the majority of Plaintiff's employment, he was not provided complaint 10-  
17 minute rest periods.

18           27.       Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
19 have known that Plaintiff was entitled to 10 minute rest periods in accordance with the Labor Code  
20 and applicable IWC Wage Order or payment of one additional hour of pay at their regular rates of pay  
21 when they were not provided with a compliant 10 minute rest period and that Plaintiffs and aggrieved  
22 employees were not provided compliant 10 minute rest periods or payment of one additional hour of  
23 pay at their regular rates of pay when they were not provided a compliant 10 minute rest period.

## **UNREIMBURSED BUSINESS EXPENSES**

25           28.     At all times relevant herein, Defendants provided Plaintiff and other employees with  
26 an insufficient quantity of tools to adequately perform their job duties. Plaintiff and other employees  
27 were required to supply their own tools to perform their job duties. As such, Plaintiff and other  
28 employees were required to incur expenses for tools, which Defendants have not reimbursed.

1 Defendants' practice of failing to reimburse non-double minimum wage-earning mechanics and  
2 technicians for the purchase of their hand tools and equipment is violation of Labor Code § 2802.

3 29. Plaintiff MARK RYCHLIK incurred approximately \$1,221.45 in tool purchases to  
4 perform his job duties with Defendants.

5 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
6 have known that Plaintiffs was entitled to receive full reimbursement for all business-related expenses  
7 and costs he incurred in direct consequence of the discharge of their duties and that they did not receive  
8 full reimbursement of applicable business-related expenses and costs incurred.

9 **FAILURE TO PAY OVERTIME**

10 31. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other  
11 employees were not paid for all hours worked because all hours worked were not recorded.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
13 have known that Plaintiff and other employees were entitled to receive certain wages for overtime  
14 compensation and that they were in fact not receiving certain wages for overtime compensation.

15 **FAILURE TO PAY MINIMUM WAGES**

16 33. Plaintiff is informed and believes, and thereon allege, that Defendants knew or should  
17 have known that Plaintiff and other employees were entitled to receive at least minimum wages for  
18 compensation and that they were not receiving at least minimum wages for work that was required to  
19 be done off-the-clock. In violation of the California Labor Code, Plaintiffs and other employees were  
20 not paid at least minimum wages for work done off-the-clock.

21 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

22 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should  
23 have known that Plaintiffs and other employees were entitled to timely payment of all wages earned  
24 upon termination of employment. In violation of the California Labor Code, Plaintiff and other  
25 employees did not receive payment of all wages due, including overtime wages, minimum wages,  
26 and meal and rest period premiums, within the time periods required by law.

27 **WILLFUL FAILURE TO PAY WAGES**

28 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should

1 have known that Plaintiff and other employees were entitled to timely payment of all wages earned  
2 upon termination of employment. In violation of the California Labor Code, Plaintiff and other  
3 employees did not receive payment of all wages due, including meal and rest period premiums, and  
4 reimbursement for business expenditures, unpaid minimum wage and overtime, within the time  
5 periods required by law.

6 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
7 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and  
8 other employees for all hours worked, and that Defendants had the financial ability to pay such  
9 compensation, but willfully, knowingly, and intentionally failed to do so.

10 **FAILURE TO TIMELY PAY WAGES**

11 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
12 have known that Plaintiff and other employees were entitled to timely payment of wages during their  
13 employment. Plaintiff did not receive payment of all wages, including meal and rest period premiums,  
14 and reimbursement for business expenditures in violation of the California Labor Code.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

17 **IN VIOLATION OF LABOR CODE § 2802**

18 **(AGAINST ALL DEFENDANTS)**

19 38. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
20 though fully set forth herein.

21 39. An employer shall indemnify his or her employee for all necessary expenditures or  
22 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or  
23 her obedience to the directions of the employer.

24 40. From February 6, 2021 to the present date, Plaintiff has been required by Defendants  
25 to purchase tools, and in fact did purchase tools in order to perform duties.

26 41. From February 6, 2021 to the present date, Defendants failed to pay Plaintiff less than  
27 twice the minimum wage in contravention of IWC Wage Order 4-2001, § 9(B), 8 CAL. CODE REGS. §  
28 11040, § 9(B), and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

42. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to indemnify Plaintiff for the reasonable expenses incurred in the course of performing duties. Specifically, Plaintiff is informed and believes, and thereon alleges that at all relevant times, Defendants have not reimbursed Plaintiff for purchasing necessary tools.

43. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by for the purchase of the tools that were necessary for the performance of job and which was required to purchase in an amount according to proof at trial.

44. As a result of the foregoing, Plaintiff is further entitled to an award of interest at the same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary expenditures or loses and all reasonable costs, including attorney's fees incurred by enforcing the rights granted by Labor Code § 2802.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY MINIMUM WAGE**  
**IN VIOLATION OF LABOR CODE § 1197**  
**(AGAINST ALL DEFENDANTS)**

45. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

46. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined by the applicable wage order as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G).

47. At all times relevant to this suit, the minimum wage applicable to Plaintiff was \$26 per hour, which represents twice the state minimum.

48. At all relevant times, Defendants failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Industrial Welfare Commission Order No. 4-2001 and

1 California Labor Code §§ 1182.12, 1194, 1194.2 and 1197.

2       49. Due to Defendants' company-wide scheduling practices and policies, Plaintiff was  
3 forced to forego meal periods and/or have meal periods interrupted by work, and was not relieved of  
4 all duties for unpaid meal periods, in order to meet deadlines and handle workload. Defendants did  
5 not pay minimum wages for meal periods Plaintiff worked through that qualified for premium  
6 payment. Defendants did not pay Plaintiff for the time continued to perform duties during meal  
7 periods.

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

12       51. Defendants did not pay at least minimum wages for all hours worked by Plaintiff. To  
13 the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants  
14 did not pay at least minimum wages for those hours Plaintiff worked off-the-clock in violation of  
15 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, Defendants  
16 regularly failed to pay at least minimum wages to Plaintiff for all of the hours worked. Defendants'  
17 failure to pay Plaintiff violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

18       52. Defendants failure to pay the legal minimum wage to Plaintiff as alleged herein is  
19 unlawful and creates entitlement, pursuant to Labor Code §1194, to recovery by Plaintiff in a civil  
20 action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference  
21 between the straight time compensation paid and applicable minimum wage, including interest thereon.

22       53. Pursuant to Labor Code §1194, Plaintiff is entitled to an award of reasonable attorneys'  
23 fees and costs incurred in this action.

24       54. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated  
25 damages in an amount equal to the minimum wages unlawfully unpaid in the amount according to proof  
26 at trial.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME WAGE**  
**IN VIOLATION OF LABOR CODE § 510**  
**(AGAINST ALL DEFENDANTS)**

55. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

56. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code § 1198 requires that “the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

57. Labor Code § 510 and the applicable IWC Wage Order required Defendants to pay employees a rate of time and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a workweek. Labor Code § 510 and the applicable IWC Wage Order further required Defendants to pay employees working more than 12 hours in a day, overtime compensation at a rate of 2 times their regular rate of pay, and 2 times their regular rate of pay for all hours worked in excess of 8 hours on the seventh consecutive day of a work in a workweek.

58. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor Code §510, 8 Code Regulations §§11010-11160, and the applicable IWC Wage Order.

59. At all relevant times, Defendants willfully failed to pay all overtime wages owed to Plaintiff. At all relevant times, Plaintiff was not paid overtime premiums for all of the hours worked in excess of 8 hours in a day, in excess of 12 hours in a day, and/or in excess of 40 hours in a week.

60. At all relevant times herein, Defendants had, and continue to have, a company-wide policy of failing to implement any policies to authorize and permit employees to take compliant meal periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal periods by assigning them a heavy workload and understaffing their facilities.

61. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods even though they are aware that employees are entitled to such meal periods. As a result of this

1 company-wide understaffing of its facilities and failure to schedule meal periods, Plaintiff was not  
2 always authorized and permitted to take uninterrupted 30-minute meal periods during shifts to which  
3 was entitled to receive a meal period. For example, Plaintiff regularly worked through meal periods  
4 and had meal periods interrupted by supervisors and by work to meet expected targets.

5         62.       At all relevant times, Defendants had no policy for scheduling second meal periods and  
6 no practice of permitting Plaintiff to take second 30-minute meal periods. As a result, on days that  
7 Plaintiff worked in excess of 10 hours, was not provided with second 30-minute meal periods.

8         63.       Defendants knew or should have known that, as a result of their policies and practices,  
9 Plaintiff was performing some of assigned duties off-the-clock and/or during unpaid meal periods,  
10 and was suffered or permitted to perform work for which was not paid. Because Plaintiff worked  
11 shifts in excess of 8 hours a day or more and 40 hours a week or more, much of this off-the-clock  
12 work qualified for overtime premium pay. Therefore, Plaintiff was not paid overtime wages for all of  
13 the overtime hours actually worked. To the extent Plaintiff worked shifts in excess of 12 hours a day,  
14 or in excess of 8 hours on the seventh consecutive day of a work in a workweek, Plaintiff was not paid  
15 double time wages for all overtime hours actually worked.

16         64.       Defendants' failure to pay Plaintiff the balance of overtime compensation, as required  
17 by California law, violates the provisions of California Labor Code §§ 510 and 1198. Pursuant to  
18 California Labor Code § 1194, Plaintiff is entitled to recover unpaid overtime compensation, as well  
19 as interest, costs, and attorneys' fees.

20         65.       Labor Code §558 (a) requires that any person acting on behalf of an employer who  
21 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each  
22 underpaid employee for each pay period in which the employee was underpaid in addition to an amount  
23 sufficient to recover underpaid wages. Also, Labor Code §558 (a) for each subsequent violation, the  
24 person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee  
25 for each pay period for which the employee was underpaid in addition to an amount sufficient to recover  
26 the underpaid wages

27         66.       In addition to the above withheld overtime wages, Plaintiff is entitled to civil penalties  
28 in this amount stated above based upon Defendants' underpayment of overtime wages. Defendants

1 violated Labor Code §558 on each of the past pay periods within the one-year preceding the filing of  
2 this complaint, the first of which Defendants are penalized \$50.00, and the remainder of which  
3 Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties in an amount to  
4 be proven at trial.

5 **FOURTH CAUSE OF ACTION**  
6 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**  
7 **IN VIOLATION OF LABOR CODE §§ 226, 1174 and 1198**  
8 **(AGAINST ALL DEFENDANTS)**

9 67. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
10 though fully set forth herein.

11 68. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-  
12 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross  
13 wages, total deductions net wages earned and name of the employer. An employer who violates these  
14 code sections is liable to its employees for the greater of actual damages suffered by the employee, or  
15 \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per  
16 employee for each subsequent pay period, up to a statutory maximum of \$4,000.00.

17 69. At all relevant times, Defendants have knowingly and intentionally furnished their  
18 employees with uniform, incomplete, and inaccurate wage statements.

19 70. Defendants failed to furnish their employees with itemized wage statements that  
20 accurately reflect the overtime rates in effect, in violation of Labor Code § 226 (a) (9).

21 71. Because Defendants failed to document and deducted time worked from Plaintiff's  
22 wage statements and employment records for meal periods did not actually receive, Defendants  
23 unlawfully deducted wages earned and meal period premiums that should have been paid. Thus,  
24 Defendants did not furnish wage statements to Plaintiff containing the correct amount of gross wages  
25 earned in violation of Labor Code § 226 (a) (1), accurate total hours worked in violation of Labor  
26 Code § 226 (a) (2), correct amount of net wages earned in violation of Labor Code § 226 (a) (5), or  
27 accurate number of hours worked at each corresponding hourly rate in violation of Labor Code § 226  
28 (a) (9).

1           72.       To the extent that Defendants paid any meal break premium and/or rest break premium  
2 payments, Defendants failed to identify such payments on Plaintiff's wage statements and employment  
3 records, and Defendants otherwise failed to provide information on the wage statements sufficient to  
4 identify how many premium payments were paid during each pay period, the specific dates worked  
5 giving rise to the premium payments owed, or to determine whether such premium payments  
6 adequately and/or accurately compensated Plaintiff for any and all premiums owed.

7           73.       Pursuant to the applicable IWC Wage Order, employers are required to keep accurate  
8 time records showing when the employee begins and ends each work period and meal period, as well  
9 as the total daily hours worked, total wages paid each payroll period, total hours worked in the payroll  
10 period and applicable rates of pay.

11          74.       California Labor Code section 1174 (d) provides that "every person employing labor  
12 in this state shall ... keep a record showing the names and addresses of all employees employed and  
13 the ages of all minors" and "keep, at a central location in the state or at the plants or establishments at  
14 which employees are employed, payroll records showing the hours worked daily by and the wages paid  
15 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
16 employed at the respective plants or establishments..."

17          75.       At all relevant times, Defendants willfully failed to keep records of meal period start  
18 and stop times, shift start and stop times, total hours worked in the payroll period and applicable hourly  
19 rates of pay for Plaintiff as a result of failing to record the off-the-clock hours worked during unpaid  
20 meal and rest periods in violation of section 1198 and 1174 (d).

21          76.       Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an  
22 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the  
23 employer for such violation. The term 'other person acting on behalf of an employer' is limited to a  
24 natural person who is an owner, director, officer, or managing agent of the employer.

25          77.       Plaintiff is entitled to recover from Defendants the greater of actual damages caused  
26 by Defendants' failure to comply with California Labor Code section 226 (a), or an aggregate penalty  
27 not exceeding \$4,000 as well as attorneys' fees and costs.

28

**FIFTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**LABOR CODE §§ 226.7, 512 (a) and 1198**  
**(AGAINST ALL DEFENDANTS)**

78. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

79. “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.” Lab. Code § 512; IWC Wage Order Nos. 1–2001 to 16–2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal Code Regs § 11170, § 9.

80. “An employer shall not require an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission .... If an employer fails to provide an employee a meal ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal ... period is not provided.” Lab. Code § 226.7 (b) & (c).

81. At all relevant times herein, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their locations while simultaneously assigning demanding workloads, which had the combined effect of preventing employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, Defendants had no policy and/or practice of scheduling meal periods for employees. As a result of Defendants’ policies and/or practices, employees had to work through some or all of their meal periods, have their meal periods interrupted

1 to return to work, and/or wait extended periods of time before taking meal periods.

2       82.     At all relevant times, Plaintiff regularly worked more than five hours per day, and was  
3 thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

4       83.     At all relevant times, Defendants failed and refused to provide Plaintiff with at least  
5 one uninterrupted meal period during work shifts, and failed to compensate for missed meal periods,  
6 as required by Labor Code §§ 226.7, 512, and 1198 as well as the applicable sections of the Code of  
7 Regulations and Industrial Welfare Commission Orders.

8       84.     Defendants did not provide Plaintiff with second 30-minute meal periods on days that  
9 worked in excess of 10 hours in one day. Plaintiff worked 10 or more hour shifts and, at times, up to  
10 12 or more hours in a shift without being permitted or authorized to take a second 30-minute meal  
11 period.

12       85.     Plaintiff is also informed and believe that Defendants engaged in a systematic,  
13 company-wide practice and/or policy of not paying meal period premiums to employees regardless of  
14 whether they were able to take a compliant meal break, in violation of the applicable IWC Wage Order  
15 and Labor Code sections 226.7 and 512 (a). As a result, Defendants failed to provide Plaintiff  
16 compliant meal periods in violation of California Labor Code sections 226.7 and 512 and failed to pay  
17 the full meal period premiums due.

18       86.     As alleged herein, Plaintiff is not exempt from the meal period requirements of the  
19 applicable Code of Regulations and Industrial Welfare Commission Orders. Consequently, Plaintiff is  
20 owed one hour of pay at regular hourly rate for each day that was denied such meal periods.

21       87.     At all relevant times, Defendants failed to provide Plaintiff with the statutory meal  
22 period for those days on which worked at least five hours. Consequently, Plaintiff is owed one hour of  
23 pay at regularly hourly rate then in effect for each day that was denied such a meal period pursuant to  
24 Labor Code §§ 226.7 and 512, plus interest thereon and costs of suit in an amount subject to proof at  
25 trial.

**SIXTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE REST PERIODS**  
**LABOR CODE §§ 226.7 and 1198**  
**(AGAINST ALL DEFENDANTS)**

88. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

89. At all times relevant herein, Labor Code §§ 226.7, 1198 and applicable IWC Wage Orders were applicable to Plaintiff's employment with Defendants.

90. At all relevant times, Labor Code §§ 226.7, 1198 and the applicable IWC Wage Order provided that employees must be given 10-minute net rest periods for every 4 hours of work, to be taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

91. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5<sup>th</sup> 257, 269-70 (2016).

92. “An employer shall not require an employee to work during a rest ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission .... If an employer fails to provide an employee a rest ... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest ... period is not provided.” Lab. Code § 226.7 (b)-(c).

93. Defendants' company-wide policy and practice of understaffing while simultaneously assigning demanding workloads, prevented employees from being relieved of all duty in order to take compliant rest periods.

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

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

96. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus, Defendants denied Plaintiff rest periods and failed to pay rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

97. As alleged herein, Plaintiff is not exempt from the rest period requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders. Consequently, Plaintiff is owed one hour of pay at regularly hourly rate then in effect for each day that was denied such a rest period pursuant to Labor Code §§ 226.7, plus interest thereon and costs of suit in an amount subject to proof at trial.

## SEVENTH CAUSE OF ACTION

## FAILURE TO TIMELY PAY WAGES

**IN VIOLATION OF LABOR CODE § 204**

98. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

99. "All wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Lab. Code § 204.

1           100.     “In addition to, and entirely independent and apart from, any other penalty provided in  
2 this article, every person who fails to pay the wages of each employee as provided in Sections ... 204  
3 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for  
4 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional  
5 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the  
6 amount unlawfully withheld.” Lab. Code § 210.

7           101.     At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiff  
8 all wages due by the seventh calendar day following the close of the payroll period. Indeed, as discussed  
9 above, Plaintiff is owed wages for unpaid minimum wage, meal periods and unreimbursed business  
10 expenses, overtime and minimum wage. At no time during employment were these outstanding sums  
11 ever paid to him. Instead, these outstanding sums continued to accumulate every pay period. Therefore,  
12 Plaintiff was not paid all wages earned by the seventh calendar day following the close of pay periods.

13           102.     As a direct and proximate result of Defendants’ failure to timely pay wages, Plaintiff  
14 is entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

15                               **EIGHTH CAUSE OF ACTION**

16                               **WILLFUL FAILURE TO PAY WAGES**

17                               **IN VIOLATION OF LABOR CODE §§ 201-203**

18           103.     Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
19 though fully set forth herein.

20           104.     “If an employer discharges an employee, the wages earned and unpaid at the time of  
21 discharge are due and payable immediately.” Lab. Code § 201. “If an employee not having a written  
22 contract for a definite period quits his or her employment, his or her wages shall become due and  
23 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of  
24 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
25 quitting.” Lab. Code § 202. “If an employer willfully fails to pay any wages of an employee who is  
26 discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof  
27 at the same rate until paid or until an action therefor is commenced.” Lab. Code § 203. Plaintiff was  
28 not exempt from the requirements of Labor Code §§ 201-203.

1           105. As discussed above, Plaintiff is owed wages for unpaid rest period premiums. At no  
2 time since Plaintiff's separation of employment did Defendants pay him wait-time penalties as required  
3 by Labor Code § 203.

4           106. As a direct and proximate result of Defendants' willful failure to pay Plaintiff's wages  
5 upon separation of employment, Plaintiff incurred wait-time penalties in an amount equal to daily rate  
6 of pay over the period that the wages were not paid in an amount subject to proof at trial.

7                                   **NINTH CAUSE OF ACTION**  
8                                   **CIVIL PENALTIES IN VIOLATION OF**  
9                                   **LABOR CODE § 2699, ET SEQ.**  
10                                  **(AGAINST ALL DEFENDANTS)**

11           107. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
12 though fully set forth herein.

13           108. Under Labor Code §2698, et seq., Plaintiff, as a aggrieved employee, may bring an  
14 action against Defendants, on behalf of and other current or former employees, seeking civil penalties  
15 for defendants' violations of the California Labor Code.

16           109. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq.  
17 by virtue of the numerous Labor Code violations she was subjected to as plead herein.

18           110. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings  
19 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse  
20 for necessary business expenditures in violation of Labor Code § 2802, failing to pay minimum wages  
21 in violation of Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198, failing to pay overtime in  
22 violation Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and maintain  
23 accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide meal periods in  
24 violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code §§  
25 226.7 and 1198, failure to timely pay wages in violation of Labor Code § 204 and willful failure to pay  
26 wages in violation of Labor Code § 201-203.

27           111. On April 14, 2021 Plaintiff provided written notice by online filing with the Labor and  
28 Workforce Development Agency and by certified mail to Defendants of the specific provisions of the

1 Labor Code alleged to have been violated, including the facts and theories to support the alleged  
2 violation, as required by Labor Code § 2699.3 (a) (1) (A).

3 112. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and  
4 Workforce Development Agency of its intent to pursue an action against Defendants.

5 113. As a direct and proximate result of Defendants' California Labor Code violations as set  
6 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period  
7 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent  
8 violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing for  
9 a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide  
10 for a penalty.

11 114. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the  
12 recovered civil penalties.

13 **TENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION IN VIOLATION OF**

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

16 **(AGAINST ALL DEFENDANTS)**

17 115. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
18 though fully set forth herein.

19 116. Defendants are a "person" as defined by California Business & Professions Code  
20 sections 17201.

21 117. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful  
22 and harmful to Plaintiff and to the general public. Plaintiff has suffered injury in fact and has lost money  
23 as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights  
24 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

25 118. A violation of California Business & Professions Code sections 17200, *et seq.* may be  
26 predicated on the violation of any state or federal law.

27 119. Defendants' failure to obey the wage and hour laws plead herein, including violations  
28 of the Labor Code, Code of Regulations and Wage Orders, constitute unfair business practices in



1 failing to pay minimum wages to Plaintiff;

2 || 8. For payment of unpaid wages in an amount subject to proof;

3           9.       For liquidated damages pursuant to Labor Code §1194.2 in an amount subject to proof,  
4 plus interest;

10. For prejudgment interest at the legal rate from the date the obligation became due through the date of judgment in this matter;

7 11. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the  
8 rights granted by Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to Labor Code §  
9 1194 (a); and

10      12.      For such other relief that the Court deems just and appropriate.

### As to the Third Cause of Action

**(Unpaid Overtime)**

13           13.       That the Court adjudge, declare and decree that Defendants violated Labor Code §§  
14 510 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay  
15 overtime wages to Plaintiff;

16      14.      For payment of unpaid overtime wages in an amount subject to proof;

17           15.     For prejudgment interest at the legal rate from the date the obligation became due  
18 through the date of judgment in this matter;

19           16. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the  
20 rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a); and

21      17.      For such other relief that the Court deems just and appropriate.

### As to the Fourth Cause of Action

### (Noncompliant Wage Statements and Payroll Records)

24           18.       That the Court adjudge, declare and decree that Defendants violated Labor Code §§  
25 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnished  
26 compliant, accurate itemized wage statements to Plaintiff and for failure to keep accurate payroll  
27 records;

28      19.      For consequential and incidental losses and damages according to proof;

- 1           20.     For injunctive relief pursuant to Labor Code § 226 (h);  
2           21.     For statutory penalties pursuant to Labor Code § 226 (e);  
3           22.     For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the  
4 rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and  
5           23.     For such other relief that the Court deems just and appropriate.

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

7                               **(Failure to Provide Meal Periods)**

- 8           24.     That the Court declare, adjudge, and decree that Defendants violated California Labor  
9 Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully  
10 failing to provide all meal periods to Plaintiff;  
11          25.     That the Court make an award to the Plaintiff of one hour of pay at regular rate of pay  
12 for each workday that a meal period was not provided;  
13          26.     For all actual, consequential, and incidental losses and damages, according to proof;  
14          27.     For premiums pursuant to California Labor Code section 226.7 (b);  
15          28.     For pre-judgment interest on any unpaid meal period premiums from the date such  
16 amounts were due, or as otherwise provided by law;  
17          29.     For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
18 as otherwise provided by law; and  
19          30.     For such other relief that the Court deems just and appropriate.

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

21                               **(Failure to Provide Rest Periods)**

- 22          31.     That the Court declare, adjudge, and decree that Defendants violated California Labor  
23 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to  
24 provide all rest periods to Plaintiff;  
25          32.     That the Court make an award to Plaintiff of one hour of pay at regular rate of pay for  
26 each workday that a rest period was not provided;  
27          33.     For all actual, consequential, and incidental losses and damages, according to proof;  
28          34.     For premiums pursuant to California Labor Code section 226.7 (b);

1           35.     For pre-judgment interest on any unpaid rest period premiums from the date such  
2 amounts were due, or as otherwise provided by law;

3           36.     For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
4 as otherwise provided by law; and

5           37.     For such other relief that the Court deems just and appropriate.

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

7                               **(Failure to Timely Pay Wages)**

8           38.     That the Court declare, adjudge, and decree that Defendants violated California Labor  
9 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay  
10 wages to Plaintiff and aggrieved employees members;

11          39.     For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully  
12 withheld from Plaintiff and aggrieved employees members;

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

14          41.     For pre-judgment interest on any unpaid wages from the date such amounts were due,  
15 or as otherwise provided by law;

16          42.     For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
17 as otherwise provided by law; and

18          43.     For such other relief that the Court deems just and appropriate.

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

20                               **(Willful Failure to Pay Wages)**

21          44.     That the Court declare, adjudge, and decree that Defendants violated California Labor  
22 Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay  
23 minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff either upon discharge  
24 or within 72 hours of their resignation;

25          45.     For wait time penalties pursuant to Labor Code § 203;

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

27          47.     For pre-judgment interest on any unpaid wages from the date such amounts were due,  
28 or as otherwise provided by law;

1           48.     For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
2 as otherwise provided by law; and

3           49.     For such other relief that the Court deems just and appropriate.

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

5                               **(Civil Penalties under the PAGA)**

6           50.     That the Court declare, adjudge, and decree that Defendants violated all California  
7 Labor Code sections plead herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174,  
8 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

9           51.     For civil penalties pursuant to 210, 226.3, 256, 558, 1174.5, 1197.1, 2699 (a) and/or  
10 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor  
11 Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1198 and 2802;

12          52.     For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any  
13 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead  
14 herein, including Labor Code §§ 201-204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1,  
15 1198 and 2802;

16          53.     For pre-judgment and post-judgment interest as provided by law; and

17          54.     For such other and further relief as the Court deems just and appropriate.

18                               **As to the Tenth Cause of Action**

19                               **(Unfair Competition)**

20          55.     That the employment practices engaged in by Defendant as plead herein, including  
21 violations of the Labor Code sections, Code of Regulations and Wage Orders, constitute unfair business  
22 practices in violation of Business & Professions Code §§17200, et seq.;

23          56.     For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such  
24 amounts were due and payable;

25          57.     For the appointment of a receiver to receive, manage and distribute any and all funds  
26 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result  
27 of violations of California Business & Professions Code sections 17200, et seq.;

28          58.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to California

1 Code of Civil Procedure § 1021.5; and

2 59. For such other and further relief as the Court deems just and appropriate.

3 **DEMAND FOR JURY TRIAL**

4 60. Plaintiff hereby demands a trial by jury on all issues.

5 **PIMENTEL LAW, P.C.**

6  
7 Dated: June 29, 2021 By:   
8 Gabriel J. Pimentel, Esq.  
9 Yesenia L. Rodriguez, Esq.  
10 Attorneys for Plaintiff  
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