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FILED

JUN - 8 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: N. Johnson, Deputy

Attorneys for Plaintiff JUAN ELIAS ESCOBAR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF MARIN

JUAN ELIAS ESCOBAR,

Plaintiff,

v.

THOMAS H. LUTGE dba Q.S.E.
CONSTRUCTION., and DOES 1 through
50, inclusive,

Defendants.

Case No.:

CIV2101947

COMPLAINT FOR DAMAGES

1. Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, and 1182.12 (Recovery of Unpaid Minimum Wage and Overtime)
2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Labor Code §§ 226.7, Wage Order 9 (Rest Period Violations);
4. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
5. Violation of Labor Code §§ 226, subds. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements);
6. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices);
7. Violation of Labor Code §§ 2698-2699 (Private Attorneys' General Act)

DEMAND FOR JURY TRIAL

1 Plaintiff JUAN ELIAS ESCOBAR ("Plaintiff" or "Mr. Escobar") hereby respectfully
2 complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action against his former employer, Defendants THOMAS H.
5 LUTGE, and THOMAS H. LUTGE dba Q.S.E. CONSTRUCTION, ("Defendants"), and DOES
6 1 through 50, inclusive, for damages arising out of Defendant's violations of the California Labor
7 Code and other statutes. Specifically, Plaintiff asserts the following causes of action against
8 Defendant: (1) failure to provide all wages owed during employment, including minimum wage
9 and overtime; (2) failure to provide meal periods, or premium compensation in lieu thereof; (3)
10 failure to provide rest periods, or premium compensation in lieu thereof; (4) failure to timely pay
11 all wages owed upon separation of employment; (5) failure to provide accurate itemized wages
12 statements; and (6) Unfair business practices under Business & Professions Code sections 17200,
13 et seq.

14 **JURISDICTION AND VENUE**

15 2. This Court is an appropriate venue for this action under Code of Civil Procedure
16 sections 395 and 395.5, because the acts that give rise to the causes of action alleged herein
17 occurred in the County of Marin, State of California. Plaintiff hereby designates the County of
18 Marin, State of California as the place of proper venue.

19 3. Plaintiff is a resident of California. Defendant is a corporation doing business in
20 California. This Court has personal jurisdiction over Defendant because a substantial portion of
21 the acts, omissions, events, and transactions constituting the causes of action alleged herein
22 occurred within the State of California, and more specifically, in the County of Marin.

23 4. This Court has subject matter jurisdiction over the causes of action alleged in this
24 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
25 excluded from exercising subject matter jurisdiction over said causes of action.

26 **THE PARTIES**

27 **Plaintiff**

28 5. Plaintiff was employed by Defendant during the Relevant Time Period, which

1 Plaintiff hereby designates for purposes of Causes of Action (1) through (7) as four (4) years prior
2 to filing this complaint, through entry of judgment. At all relevant times herein, Plaintiff was
3 employed by Defendant in an hourly paid position as a "Manager." However, despite this title, at
4 all relevant times herein, Plaintiff did not receive at least twice the applicable minimum wage,
5 and did not spend more than fifty percent (50%) of his work time performing management duties,
6 and was therefore entitled to compensation for all hours worked, including overtime
7 compensation and penalties from Defendant, as well as all other benefits provided by the Labor
8 Code, the applicable Wage Order, and all other applicable law. (*See, e.g.,* California Code of
9 Regulations § 11090(1)(A).)

10 **Defendant(s)**

11 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant
12 THOMAS H. LUTGE, is an individual who resides in California and is the owner and operation
13 of THOMAS H. LUTGE dba Q.S.E. CONSTRUCTION, and was Plaintiff's employer during the
14 Relevant Time Period. On information and belief, and based thereon, Plaintiff alleges that
15 Defendant is conducting business in good standing in California, and at all time herein mentioned
16 has regularly conducted business throughout the State of California.

17 7. Plaintiff is informed and believes, and based thereon alleges, that Defendant
18 Q.S.E. CONSTRUCTION, is an unknown business entity which is operated by THOMAS H.
19 LUTGE dba Q.S.E. CONSTRUCTION, and was Plaintiff's employer during the Relevant Time
20 Period. On information and belief, and based thereon, Plaintiff alleges that Defendant is
21 conducting business in good standing in California, and at all time herein mentioned has regularly
22 conducted business throughout the State of California.

23 8. Plaintiff is ignorant of the true names, capacities, relationships and extent of
24 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
25 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
26 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
27 capacities of the DOE Defendants when that information is ascertained.

28 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant

1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
2 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
3 are legally attributable to the other Defendants. Furthermore, Defendant operates as a joint
4 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
5 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
6 the conduct described in this complaint.

7 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
9 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
10 below was acting, at least in part, within the course and scope of that authority as such agent,
11 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
12 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
13 are legally attributable to the other Defendants.

14 **PAGA ADMINISTRATIVE PREREQUISITE**

15 11. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
16 of action under PAGA only after giving the Labor Workforce Development Agency ("LWDA")
17 and the employer notice of the Labor Code sections alleged to have been violated, and after
18 receiving notice from the LWDA of its intention not to investigate, or after sixty-five (65) days
19 have passed without notice from the LWDA.

20 12. On April 2, 2021, prior to the filing of this complaint, Plaintiff gave written notice
21 of the specified provisions alleged to have been violated, including the facts and theories to
22 support the alleged violations, as required by Labor Code section 2699.3. This written notice was
23 given via certified mail to Defendant(s), and to the LWDA by electronically filing the notice via
24 the Department of Industrial Relations website. Plaintiff was given an LWDA case number of
25 LWDA-CM-828099-21. A true and correct copy of Plaintiff's notice to the LWDA and
26 Defendant(s), dated April 2, 2021, is attached hereto as Exhibit A.

27 13. Plaintiff intends to amend his complaint as of right once at least sixty-five (65)
28 days have passed since Plaintiff's April 2, 2021, notice, if he has not received notice from the

1 LWDA, Plaintiff has satisfied all administrative prerequisites with regard to his claim for civil
2 penalties pursuant to PAGA.

3 **FACTUAL ALLEGATIONS**

4 14. At all times relevant herein, Plaintiff was a non-exempt employee within the
5 meaning of the Labor Code, and the implementing rules of the IWC California Wage Orders.

6 15. Plaintiff was employed by Defendant in a non-exempt, hourly position as a
7 “laborer” from in/on around early 2002 until approximately September 3, 2020. Plaintiff hereby
8 designates the period of four (4) years immediately preceding the filing of this Complaint, through
9 entry of judgment, as the “Relevant Time Period” for purposes of all non-PAGA causes of action.

10 16. Defendant is in the business of construction. Plaintiff essentially operated as a
11 manual laborer, doing all kinds of construction projects.

12 17. Plaintiff alleges that during the Relevant Time Period, Defendant was
13 understaffed. Because nobody was available to cover Plaintiff’s shifts, Plaintiff was not
14 authorized or provided the opportunity to take rest or meal breaks at any point. In fact, Plaintiff’s
15 time cards show clear evidence of repeated meal period violations spanning the length of the
16 entire Relevant Time Period.

17 18. During the Relevant Time Period, Plaintiff did not sign an agreement to delay or
18 waive his meal periods.

19 19. During the Relevant Time Period, Defendant failed to compensate Plaintiff with
20 premium pay of one (1) hour of the base rate of pay for each, or any, meal breaks that were not
21 authorized or permitted.

22 20. During the Relevant Time Period, Defendant failed to compensate Plaintiff with
23 premium pay of one (1) hour of the base rate of pay for each, or any, rest breaks that were not
24 authorized or permitted.

25 21. During the Relevant Time Period, Defendant employed a uniform policy and
26 practice of automatically deducting one hour of pay from Plaintiff to account for a meal period.
27 However, Defendant employed this deduction consistently, regardless of the actual time taken by
28 Plaintiff for meal breaks, or whether Plaintiff was able to take a meal break at all. Accordingly,

1 Defendant failed to pay Plaintiff for all time in which an uninterrupted, one (1) hour meal period
2 was not provided.

3 22. During the Relevant Time Period, Plaintiff was routinely underpaid based on his
4 time cards as provided to Defendant. For reasons unknown to Plaintiff at this time, Plaintiff's
5 actual rate of pay for each pay cycle was almost always less than what should have been paid to
6 him based on the hours submitted and his rate of pay. All such violations for Plaintiff resulted in
7 not only underpayment of minimum wage, but also all applicable overtime rates of pay.

8 23. During the Relevant Time Period, Defendant required Plaintiff to utilize his
9 personal cell phone for necessary business purposes including, but not limited to, communication
10 with Defendant. However, Defendant failed to provide any reimbursement to Plaintiff for this.

11 24. During the Relevant Time Period, Defendant failed to provide Plaintiff with
12 legally-compliant wage statements. Specifically, as Defendant has already conceded, no wage
13 statements were provided to Plaintiff. Additionally, any wage statements that would have been
14 provided would have been incorrect by virtue of Defendant's failure to pay all wages owed, all
15 meal and rest premiums owed, and full reimbursement for all necessary business expenditures, to
16 Plaintiff.

17 25. Further, as a result of the aforementioned alleged violations, Plaintiff failed to
18 timely receive all wages owed at the time of separation of his employment.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES**

21 **(Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, and 1182.12)**

22 **(By Plaintiff against Defendants)**

23 26. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
24 as if fully alleged.

25 27. Any employee receiving less than the legal minimum wage or legal overtime
26 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees,
27 and costs of suit. (Lab. Code § 1194, subd. (a).)

28 28. Notwithstanding any other provision of the Labor Code, hourly minimum wage

1 rates are set for all industries according to statute. (Lab. Code § 1182.12.) Employers must pay
2 employees no less than minimum wage for each hour worked. (Lab. Code § 1194.)

3 29. In any action to recover payment of wages less than the minimum wage an
4 employee shall be entitled to recover liquidated damages in an amount equal to the wages
5 unlawfully unpaid and interest thereon. (Lab. Code § 1194.2.)

6 30. Any work in excess of eight (8) hours in any workday and any work in excess of
7 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
8 times the regular rate of pay for an employee. (Lab. Code § 510, subd. (a).) Any work in excess
9 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay
10 for an employee. (Lab. Code § 510, subd. (a).)

11 31. All wages earned in employment are due and payable twice during each calendar
12 month on dates designated in advance by the employer. (Lab. Code § 204.)

13 32. In case of a dispute over wages, the employer shall pay, without condition and
14 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
15 he/she is otherwise entitled to as to any balance claimed. (Lab. Code § 206.)

16 33. Notwithstanding any other provision of the Labor Code, hourly minimum wage
17 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
18 an employee no less than the minimum wage for each hour worked. (Lab. Code § 1194.)

19 34. In any action to recover payment of wages less than the minimum wage, an
20 employee shall be entitled to recover liquidated damages in an amount equal to the wages
21 unlawfully unpaid and interest thereon. (Lab. Code § 1194.2.)

22 35. Plaintiff regularly worked over eight (8) hours per day and/or forty (40) hours per
23 week. Defendant failed to pay Plaintiff all minimum wage, overtime premiums, and/or double-
24 time premiums for all hours worked in excess of over eight (8) hours per day and/or forty (40)
25 hours per week for work performed for Defendant. Plaintiff was not paid all wages earned.
26 Pursuant to Labor Code sections 510, 1182.12, and 1194, Plaintiff seeks the payment of all
27 minimum wage, overtime, and/or double-time compensation earned and accrued four (4) years
28 prior to filing this complaint, according to proof.

1 36. Additionally, Plaintiff is entitled to liquidated damages, attorneys' fees, costs
2 pursuant to Labor Code sections 218.5 and 1194, and prejudgment interest.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

5 **(Labor Code §§ 226.7 and 512)**

6 **(By Plaintiff against Defendants)**

7 37. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
8 as if fully alleged.

9 38. Labor Code sections 226.7 and 512 provide that no employer shall employ any
10 person for a work period of more than five (5) hours without providing a meal period
11 uninterrupted by work duties of not less than thirty (30) minutes, or employ any person for a work
12 period of more than ten (10) hours without a second meal period of not less than thirty (30)
13 minutes.

14 39. Labor Code section 226.7 provides that if an employer fails to provide an
15 employee a meal period in accordance with this section, the employer shall pay the employee one
16 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
17 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
18 legally compliant meal periods, in addition to impeding, discouraging, dissuading, and/or not
19 relieving employees from all work duties during meal periods thereby preventing employees from
20 taking legally compliant meal periods.

21 40. At all times relevant hereto, Plaintiff has worked shifts of more than five (5) hours
22 in a workday.

23 41. Pursuant to Labor Code section 226.7, Plaintiff is entitled to damages in the
24 amount equal to one (1) hour of wages at their regular rate of pay for each missed meal break, in
25 an amount to be proven at trial.

26 42. At varying times relevant hereto, Plaintiff has worked shifts more than ten (10)
27 hours in a workday.

28 43. Pursuant to Labor Code section 226.7, Plaintiff requests recovery of meal period

1 compensation which he is owed beginning four (4) years prior to filing this complaint, as well as
2 the assessment of any statutory penalties against Defendant, in a sum as provided by the Labor
3 Code and/or other statutes. Pursuant to Labor Code section 218.5, Code of Civil Procedure section
4 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorneys'
5 fees and costs incurred by them in this action.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

8 **(Labor Code § 226.7)**

9 **(By Plaintiff against Defendants)**

10 44. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
11 as if fully alleged.

12 45. Labor Code section 226.7 provides that employers authorize and permit all
13 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or
14 major fraction thereof.

15 46. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
16 provide and employee rest periods in accordance with this section, the employer shall pay the
17 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
18 that the rest period is not provided. Plaintiff consistently worked over four (4) hours per shift with
19 no rest breaks, due to Defendant's uniform policies and practices.

20 47. Defendant failed to reasonably make available rest breaks to Plaintiff throughout
21 the Relevant Time Period.

22 48. Plaintiff is entitled to damages in an amount equal to one (1) hour of wages per
23 missed rest break, in a sum to be proven at trial. Pursuant to Labor Code section 218.5, Code of
24 Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award
25 reasonable attorneys' fees and costs incurred by them in this action.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT**

3 **(Labor Code §§ 201, 202, 203)**

4 **(By Plaintiff against Defendants)**

5 49. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
6 as if fully alleged herein.

7 50. Plaintiff is informed and believes, and thereon alleges, that as part of Defendant's
8 ongoing unfair business practices, Defendant failed to pay all employees all wages earned during
9 their employment at the time of their separation in violation of Labor Code sections 200 and 201.

10 51. Labor Code section 201 provides that an employer is required to pay an employee
11 whose employment is terminated by the employer all wages earned and unpaid immediately upon
12 termination.

13 52. Labor Code section 202 requires an employer pay to an employee who quits his or
14 her employment, all wages earned and unpaid no later than 72 hours thereafter.

15 53. Labor Code section 203 provides that an employer who fails to pay all wages
16 earned and due an employee who is discharged or who quits within the timeframe set forth in
17 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
18 the same rate of pay until paid, but not more than thirty (30) days. In other words, the employer
19 owes the employee his or her daily rate of pay at their regular rate of pay for each day the full
20 amount of unpaid wages is not paid, for a penalty of up to thirty (30) days' wages.

21 54. Plaintiff is entitled to thirty (30) days of pay at his final, regular rate of pay as a
22 waiting time penalty.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

25 **(Labor Code §§ 226, 1174)**

26 **(By Plaintiff against Defendants)**

27 55. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
28 as if fully alleged herein.

1 56. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage
2 Orders provide that employers must keep records and provide employees with itemized wage
3 statements showing all hours worked and each applicable rate of pay in effect during the pay
4 period with the corresponding number of hours worked at each hourly rate.

5 57. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
6 location in California or at the plant or establishment at which the employee is employed, payroll
7 records showing the hours worked daily, and the wages paid to each employee. Labor Code
8 section 226, subdivision (a) requires an employer to provide employees—either as a detachable
9 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
10 paid by personal check or cash—an accurate itemized wage statement in writing, including
11 specified information, including, but not limited to: (1) the range of dates worked (not merely the
12 date of issue); (2) the employee's gross pay; (3) the total hours worked; (4) the employee's hourly
13 rate of pay; (5) all itemized deductions; (6) the employee's net pay; and (7) the employer's
14 address. Labor Code section 226, subdivision (e) provides that if an employer knowingly and
15 intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the
16 total hours worked by the employee and the applicable hourly overtime rates, causing the
17 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
18 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
19 violation, up to four thousand dollars (\$4,000.00.) Plaintiff is informed and believes that
20 Defendant willfully failed to make or keep accurate records for Plaintiff. Specifically, Plaintiff
21 was never issued a wage statement as required by Labor Code section 226 during his entire
22 employment.

23 58. The IWC Wage Orders require that every employer shall keep accurate
24 information with respect to each employee, including time records showing when each employee
25 begins and ends each work period, the total daily hours worked by each employee, and the total
26 hours worked in each payroll period, and applicable rates of pay. Plaintiff is informed and
27 believes that Defendant willfully and intentionally failed to make and/or keep records which
28 accurately reflect the hours worked by Plaintiff. Specifically, Plaintiff believes that Defendant's

1 records merely provide the following: (1) the name of Defendant; (2) the name of employee; (3)
2 the date of payment; and (4) the total amount paid (presumably, the net payment, though this is
3 unclear.)

4 59. An employee is deemed to suffer injury if the employer fails to provide an accurate
5 wage statement containing all of the required information set forth in Labor Code section 226,
6 subdivision (a). (Lab. Code § 226, subd. (e)(2).) In addition, the omission of time worked, proper
7 rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for
8 employees to determine whether they were paid all wages due without complicated calculations
9 and/or reconstruction of records required to be maintained by the employer.

10 60. For each employee suffering an injury as a result of Defendant's knowing and
11 intentional failure to provide an accurate, itemized wage statement, the employee is entitled to
12 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
13 a violation occurs, and one hundred dollars (\$100.00) per employee for each violation in a
14 subsequent pay period.

15 61. Plaintiff is informed and believe that Defendant's failure to keep accurate payroll
16 records, as described above, violated Labor Code section 1174, subdivision (d) and section 226,
17 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
18 Code section 2699, subdivision (f)(2), Plaintiff is entitled to a penalty of one hundred dollars
19 (\$100.00) for the initial violation, and two hundred (\$200.00) for each subsequent violation, for
20 every pay period during which these records and information were not kept by Defendant.

21 62. Plaintiff is informed and believes that Defendant's failure to keep and maintain
22 accurate records and information and provide to Plaintiff accurate itemized wage statements, as
23 described above, was knowing and intentional, and that Plaintiff is entitled to statutory penalties
24 for each pay period in which a violation occurred. Plaintiff further seeks recovery of attorneys'
25 fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted
26 by law.

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SIXTH CAUSE OF ACTION
UNFAIR/UNLAWFUL BUSINESS PRACTICES
(Business and Professions Code §§ 17200 *et seq.*)
(By Plaintiff against Defendants)

63. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

64. Business & Professions Code sections 17200, *et seq.* (the "UCL") prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

65. Business and Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil action for violation of the UCL.

66. Labor Code section 90.5, subdivision (a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

67. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4) years prior to the filing of this complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business practices and acts described in this complaint, including, but not limited to, violations of Labor Code sections 201, 202, 203, 204, 206, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1182.12, and 2802, the applicable Wage Order, and all other applicable statutes and regulations.

68. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code sections 17200 *et seq.*

69. As a result of these actions, Plaintiff, on information and belief, alleges that Defendant is able to unfairly compete with other comparable companies in the State of California in violation of Business and Professions Code sections 17000 *et. seq.* and sections 17200 *et. seq.*

1 Due to these unlawful, unfair, and/or fraudulent business practices, Defendant has gained a
2 competitive advantage over other comparable companies doing business in the State of California.

3 70. The victims of these unlawful, unfair, and/or fraudulent business practices include,
4 but are not limited to, Plaintiff, similarly-aggrieved employees, competing network and logistics
5 companies in the State of California, and the general public. Plaintiff is informed and believes,
6 and thereon alleges, that Defendant performed the above-mentioned acts with the intent of gaining
7 an unfair competitive advantage and thereby injuring Plaintiff, other competitors, and the general
8 public.

9 71. Plaintiff's success in this action will enforce important rights affecting the public
10 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
11 of himself.

12 72. Business and Professions Code section 17203 provides that a court may make such
13 orders or judgments as may be necessary to prevent the use or employment by any person of any
14 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
15 prevent Defendant from repeating their unlawful, unfair, and fraudulent business acts and
16 business practices alleged above.

17 73. Business and Professions Code section 17203 provides that the court may restore
18 to any person in interest, any money or property that may have been acquired by means of such
19 unfair competition. Plaintiff is entitled to restitution pursuant to Business and Professions Code
20 section 17203 for wages and payments unlawfully withheld from employees, including the fair
21 value of the meal and rest periods and other losses alleged herein, during the four (4) year period
22 prior to the filing of this complaint. All remedies are cumulative pursuant to Business and
23 Professions Code section 17205.

24 74. Business and Professions Code section 17202 provides: "Notwithstanding section
25 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
26 forfeiture, or penal law in a case of unfair competition." Plaintiff is entitled to enforce all
27 applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
28 section 17202.

1 75. Plaintiff requests injunctive relief pursuant to Business and Professions Code
2 section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged
3 herein.

4 76. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
5 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
6 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
7 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
8 Code of Civil Procedure section 1021.5 and others.

9 **SEVENTH CAUSE OF ACTION**

10 **VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS'**

11 **GENERAL ACT - CAL. LABOR CODE § 2698-2699**

12 **(Plaintiff and Plaintiff Class against all Defendants)**

13 77. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
14 set forth herein, paragraphs 1 through 94 of this complaint.

15 78. California Labor Code sections 2698-2699 - The Labor Code Private Attorneys'
16 General Act of 2004 provides for a civil penalty to be assessed and collected by the Labor and
17 Workforce Development Agency, or any of its departments, divisions, commissions, boards
18 agencies or employees for a violation of the Cal. Labor Code, may be recovered through a civil
19 action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all
20 other current or former employees.

21 79. Whenever the Labor and Workforce Development Agency, or any of its
22 departments, divisions, commissions, boards agencies or employees has discretion to assess a civil
23 penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same
24 limitations and conditions to assess a civil penalty.

25 80. Plaintiff and Plaintiff Class are "aggrieved employees" as defined by Cal. Labor
26 Code § 2699 in that they are all current or former employees of Defendant, and one or more of the
27 alleged violations was committed against them.

28 81. Prior to filing this Complaint, on August 12, 2015, Plaintiff gave written notice by

certified mail to the Labor and Workforce Development Agency ("LWDA") and to LaCorr Packaging, LLC, of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Cal. Labor Code § 2699.3.

82. Plaintiff asserts all of the claims in this Complaint against Defendant, individually and on behalf of all aggrieved employees of the Plaintiff Class, in his capacity as private attorney general, and seeks all statutory penalties available under the Labor Code.

83. Pursuant to Cal. Labor Code § 2699 Plaintiff, individually and on behalf of all aggrieved employees, request and are entitled to recover from Defendant; unpaid wages, overtime compensation, rest and meal period compensation and penalties, waiting period wages and penalties according to proof, penalties for failure to keep accurate payroll records, interest, attorneys' fees and costs pursuant to Cal. Labor Code §§ 218.5 and 1194(a), and 1174, as well as all statutory penalties, and attorney's fees against Defendant, including but not limited to:

84. (a.) Penalties under Cal. Labor Code § 2699 in the amount of \$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

85. (b.) Penalties under Code of Regulations Title 8 § 11070 in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation; and

86. (c.) Any and all additional penalties and sums as provided by the Labor Code and/or other statutes.

87. In addition, thereto, Plaintiff seeks and is entitled to 50% of all penalties obtained under Cal. Labor Code § 2699 to be allocated to the General Fund, and 25% of all penalties obtained to be allocated to the Labor and Workforce Development Agency, for education of employers and employees about their rights and responsibilities under the Labor Code and 25% to all aggrieved employees.

88. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§ 2699, 218.5, 226, 1174, and 1194, and any other applicable statute.

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PRAYER FOR RELIEF

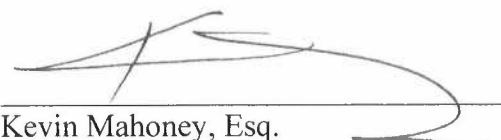
WHEREFORE, Plaintiff prays for judgment as follows:

1. For compensatory damages in an amount according to proof;
2. For restitution of all monies due to Plaintiff, and disgorged profits from Defendant's unlawful business practices;
3. For general damages in an amount according to proof;
4. For punitive damages in an amount according to proof;
5. For penalties pursuant to Labor Code sections 201-204, 206, 226, 226.7, 510, 512, 1194, 1194.2, 1194, 1197.1, and 1182.12, and all other applicable sections of the Labor Code;
6. For civil penalties under the PAGA and specific Labor Code sections;
7. For interest to date;
8. For injunctive and declaratory relief, enjoining Defendant's practices as unlawful and unfair business practices within the meaning of Business and Professions Code sections 17200, *et seq.*;
9. For reasonable attorneys' fees and expenses pursuant to the Labor Code;
10. For costs of the suit herein incurred; and
11. For any and all such other and further relief as the Court deems just and proper.

Dated: June 8, 2021

MAHONEY LAW GROUP, APC

By:


Kevin Mahoney, Esq.
Attorney for Plaintiff JUAN ELIAS
ESCOBAR

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Dated: June 8, 2021

By:

Kevin Mahoney, Esq.
Attorney for Plaintiff JUAN ELIAS
ESCOBAR