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Attorneys for Plaintiff,

BLAKE BUTTERFIELD, and all other similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

**(UNLIMITED JURISDICTION)**

BLAKE BUTTERFIELD, as an “aggrieved employee” on behalf of other similarly situated “aggrieved employees” under the Labor Code Private Attorney General Act of 2004,

*Plaintiff(s),*

vs.

L’ABRI MANAGEMENT, INC., a California corporation; and DOES 1 through 50, inclusive,

*Defendant(s).*

Case No.: 30-2021-01206353-CU-OE-CXC

**FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE §§ 2698, ET SEQ.**

**JURY TRIAL DEMANDED**



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1 Plaintiff BLAKE BUTTERFIELD (hereafter “Plaintiff”), on behalf of himself, the State  
2 of California, and other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the  
5 California Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the  
6 Wage Order”), against Defendants L’ABRI MANAGEMENT, INC., a California corporation,  
7 and DOES 1 through 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
9 him, the State of California, and other similarly situated aggrieved current and former employees  
10 who worked in California as hourly, non-exempt employees for civil penalties and other related  
11 relief. These claims are based on Defendants’ failures to: (1) Provide all rest and meal periods;  
12 (2) Pay all wages earned for all hours worked at the correct rates of pay; (3) Indemnify for  
13 necessary work-related expenditures; (4) Provide accurate and complete written wage  
14 statements; and (5) Timely pay wages during and upon termination of employment. Accordingly,  
15 Plaintiff now seeks to recover civil penalties and related relief through this representative action.

16 **II. JURISDICTION AND VENUE**

17 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff  
18 and Class Members, inclusive of all relief, place more than \$25,000 in controversy.

19 4. There is no basis for federal question subject matter jurisdiction in this case.  
20 Specifically, Plaintiff asserts claims on behalf of himself, the State of California, and Aggrieved  
21 Employees that solely arise under California law, rather than federal law.

22 5. There is also no basis for federal diversity jurisdiction in this case.

23 6. Venue is proper in Orange County pursuant to California Code of Civil Procedure  
24 § 395(a) and § 395.5 in that liability arose in Orange County because at least some of the  
25 transactions that are the subject matter of this Complaint occurred therein and/or because each  
26 defendant is found, maintains offices, transacts business, and/or has an agent therein.

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**III. THE PARTIES**

7. Plaintiff, BLAKE BUTTERFIELD, is an individual and resident of Orange County, California. In or about September of 2011, Defendants first employed Plaintiff to work in California as a residential apartment manager. Defendants terminated Plaintiff's employment on or about August 26, 2020.

8. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8 California Code of Regulations Section 11010, and an "aggrieved employee" within the meaning of California Labor Code § 2699(c).

9. Defendant L'ABRI MANAGEMENT, INC. is a corporation organized under the laws of California and a citizen of California based on Plaintiff's information and belief.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants when ascertained.

**A. THE AGGRIEVED EMPLOYEES**

11. The "Aggrieved Employees" are all individuals Defendants currently and formerly employed in California as non-exempt employees, including residential apartment managers, maintenance workers, and employees in comparable positions, at any time during the period of June 17, 2020 through entry of judgment ("the PAGA Period").

12. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

13. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.



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1           14. Plaintiff is informed and believes and thereon alleges that each and every one of  
2 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,  
3 each acting as agents and/or employees, and/or under the direction and control of each of the  
4 other defendants, and that said acts and failures to act were within the course and scope of said  
5 agency, employment, and/or direction and control.

6                                   **IV. FACTUAL ALLEGATIONS**

7           15. In or about September of 2011, Defendants first employed Plaintiff to work in  
8 California as a residential apartment manager. Defendants continuously employed Plaintiff in this  
9 position at one of their apartment complexes in Anaheim, California throughout his employment.  
10 Defendants terminated Plaintiff's employment on or about August 26, 2020.

11           16. At all relevant times, Defendants compensated Plaintiff and the Aggrieved  
12 Employees with a salary on a biweekly basis. At the time of hire, Defendants informed Plaintiff  
13 that he would be compensated by a set salary that would not increase if he worked more than 40  
14 hours in a week or otherwise worked overtime. Defendants instructed Plaintiff and the Aggrieved  
15 Employees to record no more than 40 hours of work on their weekly timesheets and discouraged  
16 them from recording more hours when their job duties compelled them to work longer hours in a  
17 week.

18           17. Additionally, Defendants did not pay Plaintiff or the Aggrieved Employees for 10  
19 minutes of rest period and recovery time every four hours worked or major fraction thereof and  
20 did not provide them with duty free 30-minute meal periods within the first five hours of work.  
21 Defendants scheduled Plaintiff and the Aggrieved Employees to begin work no later than 9 AM  
22 and to continue working until 6 PM. Due to the demands of work, Plaintiff and the Aggrieved  
23 Employees could not begin meal periods until 5 PM. On the infrequent occasions where work  
24 demands permitted Plaintiff and the Aggrieved Employees to take timely meal and rest periods,  
25 Defendants required them to take such rest periods and meal breaks at the apartment complex  
26 where they performed their duties.

27           18. Defendants did not pay Plaintiff and the Aggrieved Employees for rest period time,  
28 nor did they provide them with rest periods. At all relevant times, Plaintiff and the Aggrieved  
Employees worked over eight hours in one workday and over 40 hours in one workweek.  
Defendants knowingly required or permitted Plaintiff and the Aggrieved Employees to work in



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1 excess of this time and often in excess of eight hours per day and 40 hours per week. The work  
2 demands that Defendants placed on Plaintiff in the Aggrieved Employees required them to work  
3 at least six days a week and over 46 hours each week. During those periods of time that they were  
4 not scheduled to work, Defendants expected Plaintiff and the Aggrieved Employees to be on-call.  
5 This entailed monitoring their mobile phone for requests from tenants and management at all  
6 times. Defendants also required Plaintiff and the Aggrieved Employees to attend to tenant and  
7 management requests promptly upon receiving them regardless of whether the request came  
8 during scheduled work hours. Defendants did not pay Plaintiff and the Aggrieved Employees for  
9 this on call time.

10 19. Moreover, Defendants required Plaintiff and the Aggrieved Employees to incur  
11 certain business expenses in the course of performing their duties, including use of a personal  
12 mobile telephone to communicate with management for Defendants. Defendants did not  
13 reimburse Plaintiff and the Aggrieved Employees for their phone bills nor did they offer them  
14 phones. Moreover, Defendants required Plaintiff and the Aggrieved Employees to utilize various  
15 tools and equipment on the properties they managed to make repairs, including but not limited to  
16 saws, screw drivers, hammers, compressors, nail guns, and screw guns. Defendants did not  
17 reimburse Plaintiff and the Aggrieved Employees for their tools, or make tools available to them.

18 20. Plaintiff is informed and believes and thereon alleges that, at relevant times,  
19 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'  
20 failure to compensate the class for all hours worked, including, but not limited to overtime wages  
21 for all overtime hours they worked.

22 21. At all relevant times, Defendants failed to issue to Plaintiff and all of the other  
23 Aggrieved Employees complete and accurate wage statements that state all hours worked at the  
24 correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state  
25 on the wage statements they issued to Plaintiff and all of the other Aggrieved Employees the  
26 unpaid wages discussed above. The wage statements fail to state all hours worked at the correct  
27 rates of pay, all minimum wages earned, all regular wages earned, all overtime wages earned, all  
28 meal period premium wages earned, and all rest break premium wages earned.

22. Defendants also failed to timely pay Plaintiff and all of the other Aggrieved  
Employees all earned wages as described above during and at the conclusion of employment.

23. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'



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1 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 2 A. Not provided with all off duty meal periods;
- 3 B. Not provided with all rest break periods as required by law;
- 4 C. Not paid one hour's pay for each workday in which Defendants failed to
- 5 provide them with one or more timely rest periods;
- 6 D. Not paid one hour's pay for each workday in which Defendants failed to
- 7 provide them with one or more timely meal periods;
- 8 E. Not paid all wages earned, including, but not limited to, regular and
- 9 overtime wages for work performed while clocked out;
- 10 F. Not indemnified for all necessary business expenditures incurred during
- 11 the discharge of their duties;
- 12 G. Not provided with accurate and complete wage statements;
- 13 H. Not timely paid all earned and unpaid wages during their employment with
- 14 Defendants and at the time such employment ended.

15 **FIRST (AND ONLY) CAUSE OF ACTION**

16 **CIVIL PENALTIES**

17 **(Lab. Code §§ 2698, *et seq.*)**

18 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**

19 **Defendants)**

20 24. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 25. At all relevant times, Plaintiff and the Aggrieved Employees have been non-

22 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

23 **A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

24 26. In relevant part, California Labor Code § 1198 states:

25 “The maximum hours of work and the standard conditions of labor fixed by

26 the commission shall be the maximum hours of work and the standard

27 conditions of labor for employees. The employment of any employee for

28 longer hours than those fixed by the order or under conditions of labor

prohibited by the order is unlawful.”

27 27. In relevant part, California Labor Code § 512 states:



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1 An employer shall not employ an employee for a work period of more than  
2 five hours per day without providing the employee with a meal period of not  
3 less than 30 minutes, except that if the total work period per day of the  
4 employee is no more than six hours, the meal period may be waived by mutual  
5 consent of both the employer and employee.

6 An employer shall not employ an employee for a work period of more than  
7 10 hours per day without providing the employee with a second meal period  
8 of not less than 30 minutes, except that if the total hours worked is no more  
9 than 12 hours, the second meal period may be waived by mutual consent of  
10 the employer and the employee only if the first meal period was not waived.

11 28. In relevant part, Section 11 of the Wage Order states:

12 **Meal Periods**

13 (A) No employer shall employ any person for a work  
14 period of more than five (5) hours without a meal period of  
15 not less than 30 minutes, except that when a work period of  
16 not more than six (6) hours will complete the day's work the  
17 meal period may be waived by mutual consent of the  
18 employer and employee. Unless the employee is relieved of  
19 all duty during a 30 minute meal period, the meal period shall  
20 be considered an "on duty" meal period and counted as time  
21 worked. An "on duty" meal period shall be permitted only  
22 when the nature of the work prevents an employee from  
23 being relieved of all duty and when by written agreement  
24 between the parties an on-the job paid meal period is agreed  
25 to. The written agreement shall state that the employee may,  
26 in writing, revoke the agreement at any time.

27 (B) If an employer fails to provide an employee a meal  
28 period in accordance with the applicable provisions of this  
order, the employer shall pay the employee one (1) hour of  
pay at the employee's regular rate of compensation for each  
workday that the meal period is not provided.

29 29. In relevant part, Section 12 of the Wage Order states:

30 **Rest Periods**

31 (A) Every employer shall authorize and permit all  
employees to take rest periods, which insofar as practicable  
shall be in the middle of each work period. The authorized  
rest period time shall be based on the total hours worked



1 daily at the rate of ten (10) minutes net rest time per four (4)  
2 hours or major fraction thereof. However, a rest period need  
3 not be authorized for employees whose total daily work time  
4 is less than three and one-half (3 1/2) hours. Authorized rest  
5 period time shall be counted as hours worked for which there  
6 shall be no deduction from wages.

7 (B) If an employer fails to provide an employee a rest  
8 period in accordance with the applicable provisions of this  
9 Order, the employer shall pay the employee one (1) hour of  
10 pay at the employee's regular rate of compensation for each  
11 work day that the rest period is not provided."

12 30. In addition, California Labor Code § 226.7 states:

13 (b) An employer shall not require an employee to work during a meal or rest  
14 period mandated pursuant to an applicable statute, or applicable regulation,  
15 standard, or order of the Industrial Welfare Commission, the Occupational  
16 Safety and Health Standards Board, or the Division of Occupational Safety  
17 and Health.

18 (c) If an employer fails to provide an employee a meal period or rest period  
19 in accordance with a state law, including, but not limited to, an applicable  
20 statute or applicable regulation, standard, or order of the Industrial Welfare  
21 Commission, the Occupational Safety and Health Standards Board, or the  
22 Division of Occupational Safety and Health, the employer shall pay the  
23 employee one additional hour of pay at the employee's regular rate of  
24 compensation for each work day that the meal or rest period is not provided.

25 31. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the  
26 Aggrieved Employees were entitled to uninterrupted meal periods of at least thirty (30) minutes  
27 for each day they worked five or more hours, and to a second uninterrupted 30-minute meal on  
28 days they worked more than ten hours.

32. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled  
to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or  
major fraction thereof.

33. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees  
with all required 30-minute duty-free meal periods and 10-minute rest periods in accordance with  
the Wage Order.

34. At all relevant times, Defendants did not pay Plaintiff or the Aggrieved Employees  
for 10 minutes of rest period and recovery time every four hours worked or major fraction thereof



1 and did not provide them with duty free 30-minute meal periods within the first five hours of  
2 work. Defendants scheduled Plaintiff and the Aggrieved Employees to begin work no later than  
3 9 AM and to continue working until 6 PM. Due to the demands of work, Plaintiff and the  
4 Aggrieved Employees could not begin meal periods until 5 PM. On the infrequent occasions  
5 where work demands permitted Plaintiff and the Aggrieved Employees to take timely meal and  
6 rest periods, Defendants required them to take such rest periods and meal breaks at the apartment  
complex where they performed their duties.

7 35. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
8 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy  
9 which resulted in Defendants not providing the Aggrieved Employees with all off-duty meal  
10 periods and rest breaks required by California law.

11 **B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**  
12 **THE CORRECT RATES OF PAY**

13 36. Section 2 of the Wage Order defines “hours worked” as “the time during which  
14 an employee is subject to the control of an employer, and includes all the time the employee is  
15 suffered or permitted to work, whether or not required to do so[.]”

16 37. Section 4 of the Wage order requires an employer to pay non-exempt employees  
17 at least the minimum wage set forth therein for all hours worked, which consist of all hours that  
18 an employer has actual or constructive knowledge that employees are working.

19 38. In relevant part, California Labor Code § 510 states,

20 Any work in excess of eight hours in one workday and any work in excess of  
21 40 hours in any one workweek and the first eight hours worked on the seventh  
22 day of work in any one workweek shall be compensated at the rate of no less  
23 than one and one-half times the regular rate of pay for an employee. Any work  
24 in excess of 12 hours in one day shall be compensated at the rate of no less  
than twice the regular rate of pay for an employee. In addition, any work in  
excess of eight hours on any seventh day of a workweek shall be compensated  
at the rate of no less than twice the regular rate of pay of an employee.

25 39. Section 3 of the applicable Wage Order states:

26 (A) Daily Overtime - General Provisions

- 27 (1) The following overtime provisions are applicable to employees 18  
28 years of age or over and to employees 16 or 17 years of age who  
are not required by law to attend school and are not otherwise  
prohibited by law from engaging in the subject work. Such



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employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

40. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

41. Under Labor Code § 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

42. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

43. In conjunction, these provisions of the Labor Code require employers to compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

44. At the time of hire, Defendants informed Plaintiff that he would be compensated by a set salary that would not increase if he worked more than 40 hours in a week or otherwise



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1 worked overtime. Defendants instructed Plaintiff and the Aggrieved Employees to record no more  
2 than 40 hours of work on their weekly timesheets and discouraged them from recording more  
3 hours when their job duties compelled them to work longer hours in a week.

4 45. At all relevant times, Plaintiff and the Aggrieved Employees worked over eight  
5 hours in one workday and over 40 hours in one workweek. Defendants knowingly required or  
6 permitted Plaintiff and the Aggrieved Employees to work in excess of this time and often in excess  
7 of eight hours per day and 40 hours per week. The work demands that Defendants placed on  
8 Plaintiff and the Aggrieved Employees required them to work at least six days a week and over  
9 46 hours each week. During those periods of time that they were not scheduled to work,  
10 Defendants expected Plaintiff and the Aggrieved Employees to be on-call. This entailed  
11 monitoring their mobile phone for requests from tenants and management at all times. Defendants  
12 also required Plaintiff and the Aggrieved Employees to attend to tenant and management requests  
13 promptly upon receiving them regardless of whether the request came during scheduled work  
14 hours. Defendants did not pay Plaintiff and the Aggrieved Employees for this on call time.

15 46. Plaintiff is informed and believes that, at all relevant times, Defendants have  
16 applied centrally devised policies and practices to him and the Aggrieved Employees with respect  
17 to working conditions and compensation arrangements.

18 47. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
19 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'  
20 failure to compensate the Aggrieved Employees for all hours worked, including but not limited  
21 to, regular and overtime hours at the correct rates of pay.

### 22 **C. FAILURE TO INDEMNIFY**

23 48. In pertinent part, California Labor Code section 2802(a) states, "An employer  
24 shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee  
25 in direct consequence of the discharge of his or her duties."

26 49. At all relevant times during the applicable limitations period, Defendants required  
27 Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of  
28 performing their duties, including use of a personal mobile telephone to communicate with  
management for Defendants, and tools and equipment necessary for Plaintiff and Aggrieved  
Employees to perform their maintenance responsibilities. Defendants, however, failed to



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1 reimburse them for such expenses.

2 50. Therefore, Defendants failed to indemnify them for expenditures incurred as a  
3 direct consequence of discharging their duties.

4 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
5 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'  
6 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they  
7 incurred during the course of performing their duties.

8 **D. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

9 52. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved  
10 Employees were entitled to receive, semi-monthly or at the time of each payment of wages, an  
11 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all  
12 applicable hourly rates in effect during the pay period; and d) the corresponding number of hours  
13 worked at each hourly rate by the employee.

14 53. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury  
15 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury  
16 if the employer fails to provide accurate and complete information as required by California  
17 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage  
18 statement alone one or more of the following:

19 A. The amount of the gross wages or net wages paid to the employee during  
20 the pay period or any of the other information required to be provided on the itemized wage  
21 statement pursuant to California Labor Code § 226(a);

22 B. Which deductions the employer made from gross wages to determine the  
23 net wages paid to the employee during the pay period;

24 C. The name and address of the employer and, if the employer is a farm labor  
25 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name  
26 and address of the legal entity that secured the services of the employer during the pay period;

27 D. The name of the employee and only the last four digits of his or her social  
28 security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

54. "Promptly and easily determine," as stated in California Labor Code § 226(e),



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means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

55. As alleged herein, Defendants failed to provide Plaintiff and the class all wages owed, including but not limited to, minimum and overtime wages and all premium wages for unprovided rest and/or meal periods. As a result, Defendants have failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees and other requirements of California Labor Code § 226. Further, Defendants failed to state the earned meal and rest period premium wages and their business expenses on Plaintiff and Aggrieved Employees' itemized written wage statements. As a result, Defendants have violated California Labor Code § 226.

56. Defendants' failure to provide Plaintiff and the Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

57. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the Aggrieved Employees have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

**E. UNTIMELY WAGES DURING EMPLOYMENT**

58. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor



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performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees

(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.

59. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided, and all regular and overtime wages at the correct rates of pay. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

**F. UNTIMELY FINAL WAGES**

60. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

61. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

62. By failing to pay earned minimum, overtime and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.



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63. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

64. Plaintiff is informed and believes that Defendants' failures to weekly and timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

**G. CIVIL PENALTIES SOUGHT**

65. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

66. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

67. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).



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1 D. For violations of California Labor Code § 1197, one hundred dollars  
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two  
3 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per  
4 pay period (regardless of whether the initial violations were intentionally committed) (penalty  
5 amounts established by California Labor Code § 1197.1).

6 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
7 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for  
8 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay  
9 period for each subsequent violation (penalty amounts established by California Labor Code  
§ 2699(f)(2)).

10 **I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

11 68. Plaintiff has complied with the procedures for bringing suit specified in  
12 California Labor Code § 2699.3. By letter dated June 17, 2021, Plaintiff filed written notice  
13 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice  
14 by certified mail to Defendants of the specific provisions of the California Labor Code alleged  
15 to have been violated, including the facts and theories to support the alleged violations. A true  
16 and correct copy of the notice to the LWDA dated June 17, 2021 is attached as Exhibit A.  
17 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has  
18 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but  
19 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it  
does not intend to investigate these allegations.

20 69. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved  
21 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in  
22 connection with their claims for civil penalties.

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**V. PRAYER FOR RELIEF**

70. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

**VI. DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 7, 2021

By

  
\_\_\_\_\_  
DAVID SPIVAK  
GREGORY WILBUR  
MAYA CHEAITANI  
Attorneys for Plaintiff,  
BLAKE BUTTERFIELD



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1 PROOF OF SERVICE

2  
3 State of California,  
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County  
6 of Los Angeles, State of California. I am over the age of 18 years, and not a  
party to the within action. My business address is 16530 Ventura Blvd., Suite  
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for  
8 collection and processing of correspondence for mailing with the United  
9 States Postal Service. It is the practice that correspondence is deposited  
with the United States Postal Service the same day it is submitted for  
mailing.

10 On Thursday, October 07, 2021, I served the foregoing document  
described as **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE LABOR**  
11 **CODE AND CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF**  
12 **2004, LABOR CODE §§ 2698, ET SEQ.** on interested parties by placing a true and  
correct copy thereof enclosed in a sealed envelope, with postage fully  
prepaid, addressed as follows:

13  
14 **Gary S. Ganchrow, Esq.**  
15 **Parker Milliken Clark O'Hara & Samuelian, APC**  
16 **555 S. Flower Street**  
17 **30th Floor**  
18 **Los Angeles, CA 90071**  
19 [gganchrow@pmcos.com](mailto:gganchrow@pmcos.com)

20 \_\_\_\_\_ (BY MAIL) I caused such an envelope to be mailed by placing it for  
21 collection and mailing, in the course of ordinary business practice, with  
22 other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203,  
23 Encino, California 91436.

24 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the  
25 electronic service addresses listed above from my electronic service address  
26 [jessica@spivaklaw.com](mailto:jessica@spivaklaw.com).

27 EXECUTED on Thursday, October 07, 2021, at Los Angeles, California.

28 XXXX (State) I declare under penalty of perjury under the laws of the State  
of California that the above is true and correct.

\_\_\_\_ (Federal) I declare that I am employed in the office of a member of the  
bar of this court at whose direction the service was made.

\_\_\_\_\_  
JESSICA BENCOMO