

FILED
Superior Court Of California,
Sacramento
07/25/2022
nzayaad
By _____, Deputy
Case Number:
34-2022-00320617

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Attorneys for Plaintiffs Ronnie Garcia, Peter Sumo, and Thomas Tomlinson, on behalf of themselves and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

RONNIE GARCIA, PETER SUMO,
THOMAS TOMLINSON, on behalf of
themselves and on behalf of all similarly
situated individuals,

Plaintiffs,

v.

SST CONSTRUCTION, LLC, a California
limited liability company, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 34-2022-00320617

*Assigned to the Honorable Kenneth C.
Mennemeier, Dept. 38*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

BY FAX

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES (LABOR
CODE §§ 510, 1194, AND 1194.2)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 16-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 16-2001)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**5. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

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**6. FAILURE TO REIMBURSE ALL
BUSINESS EXPENSES (LABOR CODE §
2802)**

**7. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**8. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.7,
510, 512, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: May 27, 2022

Plaintiffs RONNIE GARCIA (“Garcia”), PETER SUMO (“Sumo”), and THOMAS TOMLINSON (“Tomlinson”) (collectively, Garcia, Sumo, and Tomlinson are referred to as the “Plaintiffs”), on behalf of themselves, all similarly situated individuals, and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complain of SST CONSTRUCTION, LLC, a California limited liability company, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and the Class of individuals described in detail below against Defendants within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum and overtime wages due, provide legally compliant meal and rest periods, or compensation in lieu thereof, reimburse all business expenses, timely pay wages due at separation of employment, and issue accurately itemized wage statements.

3. Plaintiffs, on behalf of themselves and members of the Class, bring this action pursuant to Labor Code §§ 201-203, 226, 226.7, 512, 1194, and 1194.2 seeking compensation for all unpaid wages, meal and rest period premium wages, unpaid business expenses, liquidated damages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiffs, on behalf of themselves and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due.

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiffs in Sacramento County, California.

II.

TOLLING AGREEMENT

7. David Rhoe, acting on behalf of the Plaintiffs and Class Members, and Defendant entered into an agreement to toll the statute of limitations pursuant to California Code of Civil Procedure § 360.5, from November 2, 2021 and ending on the earlier of (i) the date Plaintiffs file a Complaint against Defendant or (ii) the date 10 calendar days after either Party gives written notice to the other that it seeks to conclude the Agreement. No such notice was ever given. As such, all periods of limitation (statutory or otherwise) affecting any and all claims or causes of actions which Plaintiffs may have against Defendant have been tolled between November 2, 2021 and the date this complaint is filed.

III.

PARTIES

A. Plaintiff

8. Plaintiff RONNIE GARCIA was employed by Defendants from January 2019 to April 2020 as a non-exempt employee and performed work for Defendants in Sacramento County, California.

9. Plaintiff PETER SUMO was employed by Defendants from October 2020 to January

2021 as a non-exempt employee and performed work for Defendants in Sacramento County, California.

10. Plaintiff THOMAS TOMLINSON was employed by Defendants from August 2018 to November 2019 as a non-exempt employee and performed work for Defendants in Sacramento County, California.

11. During their work with Defendants, Plaintiffs were:

- a. Willfully denied the payment of all minimum and overtime wages due;
- b. Willfully denied all meal and rest periods or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements;
- d. Willfully denied the payment of all expense reimbursement due; and
- e. Willfully denied the payment of all wages due upon separation of employment.

B. Defendants

12. Defendant SST CONSTRUCTION, LLC is a California limited liability company that employed Plaintiffs and other similarly situated individuals in Sacramento County, California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

15. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

1 IV.

2 **CLASS ACTION ALLEGATIONS**

3 16. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as
4 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All persons employed in a non-exempt position by Defendants in
8 California at any time from November 2, 2017 and continuing through
9 the present.

10 17. Plaintiffs reserve the right under Rule 3.765, California Rules of Court, to amend or
11 modify the class description with greater specificity or further division into subclasses or limitation
12 to particular issues.

13 18. This action has been brought and may properly be maintained as a class action under
14 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
15 interest in the litigation and each proposed Class is easily ascertainable.

16 **A. Numerosity**

17 19. The potential members of the Class as defined are so numerous that joinder of all class
18 members is impracticable. While the precise number of members of the Class has not been
19 ascertained at this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 currently employ, and during the relevant time periods employed, over 75 persons in the State of
21 California who fall within the Class definition.

22 20. Accounting for employee turnover during the relevant period necessarily increases this
23 number. Plaintiffs allege Defendants' employment records would provide information as to the
24 number and location of members of the Class. Joinder of members of the Class is not practicable.

25 **B. Commonality**

26 21. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual class members. These common questions of law and fact include,
28 without limitation:

- a. Whether Defendants failed to pay all minimum and overtime wages due to Plaintiffs and Class Members, in violation of Labor Code §§ 510, 1194, and 1194.2;
- b. Whether Defendants failed to properly provide rest periods, or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code § 226.7, and IWC Wage Order 16-2001;
- c. Whether Defendants failed to properly provide meal periods, or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001;
- d. Whether Defendants failed to provide Plaintiffs and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- e. Whether Defendants failed to timely pay Plaintiffs and Class Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203;
- f. Whether Defendants failed to reimburse Plaintiffs and Class Members for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802; and
- g. Whether Plaintiffs and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

22. The claims of the named Plaintiffs are typical of the claims of members of the Class. Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

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1 **D. Adequacy of Representation**

2 23. Plaintiffs will fairly and adequately represent and protect the interests of members of
3 the Class. Counsel who represents Plaintiffs are competent and experienced in litigating large
4 employment class actions.

5 **E. Superiority of Class Action**

6 24. A class action is superior to other available means for the fair and efficient adjudication
7 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law
8 and fact common to the Class Members predominate over any questions affecting only individual
9 members of the Class. Each Class Member has been damaged and is entitled to recovery by reason
10 of Defendants' illegal policies and/or practices.

11 25. Class action treatment will allow those similarly situated persons to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
14 action that would preclude its maintenance as a class action.

15 **V.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

19 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

20 **(LABOR CODE §§ 510, 1194, AND 1194.2)**

21 26. Plaintiffs incorporate paragraphs 1 through 25 of this Complaint as though fully set
22 forth herein.

23 27. Defendants failed to pay Plaintiffs and Class Members all minimum and overtime
24 wages earned, in violation of Labor Code §§ 510, 1194, and 1194.2. Plaintiffs and Class Members
25 often continued to work after clocking out at the end of their shifts. Plaintiffs and Class Members
26 would make and receive calls from Defendants and its customers off-the-clock, thereby depriving
27 them of all minimum and overtime wages due. This practice resulted in a significant underpayment
28 of wages, in violation Labor Code §§ 510, 1194, and 1194.2.

28. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiffs and members of the Class have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194, and liquidated damages pursuant to Labor Code § 1194.2.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

VI.

SECOND CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 16-2001)

29. Plaintiffs incorporate paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 16-2001.

31. Defendants failed to pay premium wages to Plaintiffs and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 16-2001. Plaintiffs and Class Members were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 16-2001.

32. Pursuant to Labor Code § 226.7 and IWC Wage Order 16-2001, Plaintiffs seek the payment of all rest period compensation which they and members of the Class are owed for four years preceding the filing of this Action, plus any applicable tolled period, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VII.

THIRD CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 16-2001)

33. Plaintiffs incorporate paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Plaintiffs and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001.

35. Defendants failed to pay premium wages to Plaintiffs and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001. Plaintiffs and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. When they were able to take a meal period, they were oftentimes late, cut short, or on-duty. These instances violate Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001.

36. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 16-2001, Plaintiffs seek the payment of all meal period compensation and unpaid wages which they and members of the Class are owed for four years preceding the filing of this Action, plus any applicable tolled period, according to proof.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VIII.
FOURTH CAUSE OF ACTION
PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

37. Plaintiffs incorporate paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

39. Defendants failed to issue Plaintiffs and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiffs and Class Members are not paid all minimum wages, overtime wages, and meal and rest period premium wages. As such, the wage statements provided by Defendants fail to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1) total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9). Separately, the wage statements issued to Plaintiffs and Class Members fail

1 to list total hours worked, in violation of Labor Code § 226(a)(2), because the wage statements fail to
2 list the total hours worked for all categories of hours worked (i.e., “Regular,” “Overtime,” and “Dbl
3 Time”), and fail to state all applicable hourly rates in effect during the pay period, in violation of
4 Labor Code § 226(a)(9), because the wage statements fail to properly identify the double time rate of
5 pay.

6 40. As a consequence of Defendants’ willful conduct in failing to provide Class Members
7 with accurate itemized wage statements, Plaintiffs and Class Members have been injured because
8 they have not been paid all wages due and were issued wage statements which do not reflect, and fail
9 to state, all information required by Labor Code § 226(a). The missing information cannot be
10 discerned at all from the face of the wage statements themselves. Plaintiffs and Class Members are
11 entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or
12 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in
13 a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled
14 to an award of costs and reasonable attorneys’ fees pursuant to Labor Code § 226(h).

15 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

16 **IX.**

17 **FIFTH CAUSE OF ACTION**

18 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

19 **FAILURE TO TIMELY PAY WAGES DUE AT**

20 **SEPARATION OF EMPLOYMENT**

21 **(LABOR CODE §§ 201-203)**

22 41. Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as though fully set
23 forth herein.

24 42. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
25 due within 72 hours after resignation of employment or the day of termination of employment. Labor
26 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
27 as a penalty, continue to pay the subject employee’s daily wages until the back wages are paid in full
28 or an action is commenced. The penalty cannot exceed 30 days of wages.

43. Defendants paid Plaintiffs and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiffs and Class Members were not paid all wages due and owing throughout the course of their employment, including all minimum and overtime wages and premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment.

44. More than 30 days have passed since Plaintiffs and Class Members have left Defendants' employ.

45. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiffs and Class Members are entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

X.

SIXTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE EXPENSES

(LABOR CODE § 2802)

46. Plaintiffs incorporate paragraphs 1 through 45 of this Complaint as though fully set forth herein.

47. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

48. Plaintiffs and Class Members were required to purchase home office equipment and use their personal cell phone and vehicles, among other things, for work-related purposes, but were not fully reimbursed by Defendants for these expenses. The purchase of these items was reasonable and necessary.

49. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

50. Pursuant to Labor Code § 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

XI.

SEVENTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

51. Plaintiffs incorporate paragraphs 1 through 50 of this Complaint as though fully set forth herein.

52. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf and on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general public, and members of the Class. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

53. Plaintiffs are each a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

54. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

55. Wage and hour laws express fundamental public policies. Properly providing employees with all wages and expense reimbursement due are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted

1 to work under substandard and unlawful conditions, and to protect law-abiding employers and its
2 employees from competitors who lower their costs by failing to comply with minimum labor
3 standards.

4 56. Defendants have violated statutes and public policies. Through the conduct alleged
5 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
6 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
7 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,
8 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
9 guaranteed to all employees under law.

10 57. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
11 §17200 *et seq.* of the Business & Professions Code.

12 58. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
13 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
14 17200 *et seq.* of the Business & Professions Code.

15 59. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others
16 similarly situated have been damaged in a sum as may be proven.

17 60. Unless restrained by this Court, Defendants will continue to engage in the unlawful
18 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
19 make such orders or judgments, including the appointment of a receiver, as may be necessary to
20 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive
21 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
22 disgorgement of profits which may be necessary to restore Plaintiffs and members of the Class to the
23 money Defendants have unlawfully failed to pay.

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1 **XII.**

2 **EIGHTH CAUSE OF ACTION**

3 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
4 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
5 **LABOR CODE §§ 201-202, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO**
6 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

7 61. Plaintiffs incorporate paragraphs 1 through 60 of this Complaint as though fully set
8 forth herein.

9 62. As a result of the acts alleged above, including the Labor Code violations set forth
10 herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.* against Defendants.

11 63. For each such violation, Plaintiffs and all other aggrieved employees are entitled to
12 penalties in an amount to be shown at the time of trial subject to the following formula:

- 13 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
14 each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, 510, 512,
15 1194, and 2802; and
16 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
17 Code §§ 226.3 and 558.

18 64. Penalties recovered will be allocated 75% to the Labor and Workforce Development
19 Agency, and 25% to the affected employees.

20 65. On May 17, 2022, Plaintiffs sent a letter, by online submission to the LWDA and by
21 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
22 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
23 Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65)
24 calendar days of May 17, 2022. Plaintiffs may therefore commence this action to seek civil penalties
25 pursuant to Labor Code § 2698 *et seq.*

26 Wherefore, Plaintiffs and the aggrieved employees they seek to represent request relief as
27 described below.

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1 **XIII.**

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiffs pray for the following relief:

4 1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 1194
5 and 1194.2, respectively, in the amount of all unpaid overtime and minimum wages due to Plaintiffs
6 and Class Members;

7 2. For compensatory damages in the amount of one hour of wages for each day on which
8 a meal and/or rest period was not properly provided to Plaintiffs and Class Members, pursuant to
9 Labor Code §§ 226.7 and 512;

10 3. For penalties pursuant to Labor Code § 226(e) for Plaintiffs and Class Members;

11 4. For penalties pursuant to Labor Code § 203 for Plaintiffs and Class Members;

12 5. For reimbursement of all expenses incurred by Plaintiffs and Class Members pursuant
13 to Labor Code § 2802;

14 6. For restitution for unfair competition pursuant to Business & Professions Code §
15 17200 *et seq.* for Plaintiffs and Class Members;

16 7. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other
17 Aggrieved Employees;

18 8. An award providing for payment of costs of suit pursuant to Labor Code § 226(h) and
19 other applicable law;

20 9. An award of attorneys' fees pursuant to Labor Code § 226(h) and other applicable law;

21 10. An award of prejudgment and post-judgment interest; and

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

23 Dated: July 22, 2022

Respectfully submitted,

24 GAINES & GAINES
25 A Professional Law Corporation

26 By: *Evan S. Gaines*
27 DANIEL F. GAINES
28 EVAN S. GAINES
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: July 22, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiffs

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action. My business address is 4550 E. Thousand Oaks Blvd., Suite 100 Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On July 22, 2022, I served the foregoing document described as **FIRST AMENDED CLASS AND**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by placing a true copy thereof
7 enclosed in sealed envelopes addressed as follows:

8 **Kevin Jackson, ESQ.**
9 **FOLEY & LARDNER LLP**
10 **11988 El Camino Real, Suite 400**
11 **San Diego, CA 92130-2594**

12 On the above date:

13 ☒ (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
14 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
15 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
16 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
17 meter date is more that one day after date of deposit for mailing in affidavit.

18 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
19 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
20 carrier or driver authorized by the express carrier to receive documents.

21 _____ (BY FACSIMILE TRANSMISSION) On July 22, 2022, at _____ a.m./p.m., at Westlake Village, California, I
22 served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008
23 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the
24 telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly
25 issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of
26 the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

27 _____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-
28 delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

_____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2022, at Westlake Village, California.

Beatriz Franco

BEATRIZ FRANCO