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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANDRE CLARIZIO, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

GUARD-SYSTEMS, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV28668^{B-7}

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3
10. UNFAIR COMPETITION.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff ANDRE CLARIZIO ("Plaintiff"), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against GUARD-SYSTEMS, INC., and any of its respective subsidiaries or affiliated companies within the State of California ("GUARD" and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

PARTIES

A. Plaintiff

2. Plaintiff ANDRE CLARIZIO is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff ANDRE CLARIZIO as a non-exempt employee, with duties that included, but were not limited to, security services. Plaintiff is informed and believes, and based thereon alleges that Plaintiff ANDRE CLARIZIO worked for Defendants from approximately October of 2017 through approximately December of 2020.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant GUARD is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of

1 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
2 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
3 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
4 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
5 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
6 include GUARD, and any of their parent, subsidiary, or affiliated companies within the State of
7 California, as well as DOES 1 through 100 identified herein.

8 JOINT LIABILITY ALLEGATIONS

9 5. Plaintiff is informed and believes and based thereon alleges that all the times
10 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
11 representative, joint venture or co-conspirator of each of the other defendants, either actually or
12 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
13 employment, joint venture, and conspiracy.

14 6. All of the acts and conduct described herein of each and every corporate defendant
15 was duly authorized, ordered, and directed by the respective and collective defendant corporate
16 employers, and the officers and management-level employees of said corporate employers. In
17 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
18 their said employees, agents, and representatives, and each of them; and upon completion of the
19 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
20 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
21 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
22 aforementioned corporate employees, agents and representatives.

23 7. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
24 thereon alleges that Defendants, and each of them, are joint employers.

25 JURISDICTION

26 8. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
27 of Civil Procedure section 410.10.

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9. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Los Angeles County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because Defendants employ numerous Class Members in Los Angeles County.

FACTUAL BACKGROUND

10. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay, engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show

1 less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment
2 of Plaintiff and Class Members.

3 11. For at least four (4) years prior to the filing of this Action and continuing to the
4 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
5 or some of them, in violation of California state wage and hour laws as a result of, among other
6 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
7 rate of pay that is above the minimum wage, engaging, suffering, or permitting employees to work
8 off the clock, including, without limitation, by requiring employees: to come early to work and leave
9 late work without being able to clock in for all that time, to suffer under Employer's control due to
10 long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after
11 clocking out, to clock out for meal periods and continue working, to attend company meetings off
12 the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries;
13 and editing and/or manipulation of time entries to show less hours than actually worked, to the
14 detriment of Plaintiff and Class Members.

15 12. For at least four (4) years prior to the filing of this Action and continuing to the
16 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
17 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
18 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
19 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
20 for such unprovided meal periods as required by California wage and hour laws.

21 13. For at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
23 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
24 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
25 California wage and hour laws.

26 14. For at least three (3) years prior to the filing of this action and continuing to the
27 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
28 full amount of their wages owed to them upon termination and/or resignation as required by Labor

1 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
2 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

3 15. For at least one (1) year prior to the filing of this Action and continuing to the present,
4 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
5 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
6 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
7 hours worked at each hourly rate; and other such information as required by Labor Code section
8 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
9 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

10 16. For at least one (1) year prior to the filing of this action and continuing to the present,
11 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
12 amount of their wages for labor performed in a timely fashion as required under Labor Code section
13 204.

14 17. For at least three (3) years prior to the filing of this action and continuing to the
15 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
16 costs incurred in mileage and/or gas costs incurred in driving personal vehicles for work-related
17 purposes; using cellular phones for work-related purposes; and purchasing tools and/or supplies
18 necessary to perform work duties.

19 18. For at least four (4) years prior to the filing of this action and continuing to the
20 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
21 employees or former employees within the State of California with compensation at their final rate
22 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

23 19. For at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendants have had a consistent policy of misclassifying Plaintiff and similarly situated
25 employees or former employees within the State of California as exempt employees.

26 20. Plaintiff, on his own behalf and on behalf of Class Members, brings this action
27 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
28 227.3, 510, 512, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8,

1 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
2 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,
3 failure to indemnify work-related expenses, failing to pay vested vacation time at the proper rate of
4 pay, other such provisions of California law, and reasonable attorneys' fees and costs.

5 21. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
6 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
7 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
8 appropriate and effective means to prevent further violations, as well as all monies owed but
9 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
10 restitution of amounts owed.

11 CLASS ACTION ALLEGATIONS

12 22. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
13 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
14 and former non-exempt employees, including non-exempt employees misclassified as salaried or
15 exempt employees, of Defendants within the State of California at any time commencing four (4)
16 years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is
17 provided to the class (collectively referred to as "Class Members").

18 23. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
19 to amend or modify the class description with greater specificity, further divide the defined class
20 into subclasses, and to further specify or limit the issues for which certification is sought.

21 24. This action has been brought and may properly be maintained as a class action under
22 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
23 of interest in the litigation and the proposed Class is easily ascertainable.

24 A. Numerosity

25 25. The potential Class Members as defined are so numerous that joinder of all the
26 members of the Class is impracticable. While the precise number of Class Members has not been
27 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
28 Members employed by Defendants within the State of California.

1 26. Accounting for employee turnover during the relevant periods necessarily increases
2 this number. Plaintiff alleges Defendants' employment records would provide information as to the
3 number and location of all Class Members. Joinder of all members of the proposed Class is not
4 practicable.

5 **B. Commonality**

6 27. There are questions of law and fact common to Class Members. These common
7 questions include, but are not limited to:

- 8 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
9 worked at a proper overtime rate of pay?
- 10 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
11 for all other time worked at the employee's regular rate of pay and a rate of pay that
12 is greater than the applicable minimum wage?
- 13 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
14 Class Members to take compliant meal periods?
- 15 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
16 with additional wages for missed or interrupted meal periods?
- 17 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
18 Class Members to take compliant rest periods?
- 19 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
20 with additional wages for missed rest periods?
- 21 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
22 Members upon termination or resignation all wages earned?
- 23 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
24 section 203?
- 25 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
26 Class Members with accurate wage statements?
- 27 J. Did Defendants fail to pay Class Members in a timely fashion as required under
28 Labor Code section 204?

- 1 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or
2 losses incurred in direct consequence of the discharge of their duties or by obedience
3 to the directions of Defendants as required under Labor Code section 2802?
4 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members
5 with compensation at their final rate of pay for vested paid vacation time.
6 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code
7 section 17200, *et seq.*, by their unlawful practices as alleged herein?
8 N. Are Class Members entitled to restitution of wages under Business and Professions
9 Code section 17203?
10 O. Are Class Members entitled to costs and attorneys' fees?
11 P. Are Class Members entitled to interest?
12 Q. Did Defendants violate Labor Code sections 201, 202, 203, 204, 226, subdivision
13 (a), 510, 1194, 1196, 512, 226.7, the Unfair Competition Law, Business and
14 Professions Code section 17200, *et seq.*, and applicable Wage Orders, among other
15 things, by misclassifying non-exempt Class Members as exempt employees?
16 R. Did Defendants violate Labor Code sections 510, 1194 and 1197 by detrimentally
17 rounding Class Members' time entries, editing and/or manipulating time entries to
18 show less hours than actually worked?

19 **C. Typicality**

20 28. The claims of Plaintiff herein alleged are typical of those claims which could be
21 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
22 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
23 damages arising out of and caused by Defendants' common course of conduct in violation of laws
24 and regulations that have the force and effect of law and statutes as alleged herein.

25 **D. Adequacy of Representation**

26 29. Plaintiff will fairly and adequately represent and protect the interest of Class
27 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
28 hour class actions.

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1 36. Four (4) years prior to the filing of the Complaint in this Action through the present,
2 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
3 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
4 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
5 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
6 actually worked at the proper overtime rate of pay, engaging, suffering, or permitting employees to
7 work off the clock, including, without limitation, by requiring employees: to come early to work
8 and leave late work without being able to clock in for all that time, to suffer under Employer's
9 control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift
10 tasks after clocking out, to clock out for meal periods and continue working, to attend company
11 meetings off the clock, to make phone calls or drive off the clock, and/or go through security
12 screenings and/or temperature checks off the clock; failing to include all forms of remuneration,
13 including non-discretionary bonuses, and other forms of remuneration into the regular rate of pay
14 for the pay periods where overtime was worked and the additional compensation was earned for the
15 purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries,
16 editing and/or manipulation of time entries to show less hours than actually worked, and for paying
17 straight pay instead of overtime pay, to the detriment of Plaintiff and Class Members.

18 37. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
19 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
20 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
21 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
22 applicable IWC Wage Orders, and California law.

23 38. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
24 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
25 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
26 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

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1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages – Against All Defendants)**

3 39. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 40. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

7 41. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
8 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
9 Defendants' control.

10 42. For four (4) years prior to the filing of the Complaint in this Action through the
11 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
12 their regular rate of pay that is above the minimum wage, engaging, suffering, or permitting
13 employees to work off the clock, including, without limitation, by requiring employees: to come
14 early to work and leave late work without being able to clock in for all that time, to suffer under
15 Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in
16 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to attend
17 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding
18 of employee time entries; and editing and/or manipulation of time entries to show less hours than
19 actually worked, to the detriment of Plaintiff and Class Members.

20 43. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
21 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
22 for all hours worked or otherwise due.

23 44. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
24 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
25 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
26 damages, reasonable attorneys' fees and costs of suit.

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1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods – Against All Defendants)**

3 45. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 46. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

7 47. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
8 employ an employee for a work period of more than five (5) hours without a timely meal break of
9 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
10 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
11 per day without providing the employee with a second timely meal period of not less than thirty (30)
12 minutes in which the employee is relieved of all of his or her duties.

13 48. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
14 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
15 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
16 of compensation for each workday that the meal period is not provided.

17 49. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
19 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
20 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
21 Class Member's regular rate of compensation on the occasions that Class Members were not
22 provided compliant meal periods.

23 50. By their failure to provide Plaintiff and Class Members compliant meal periods as
24 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
25 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
26 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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1 Member's regular rate of compensation on the occasions that Class Members were not authorized
2 or permitted to take compliant rest periods.

3 58. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
4 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
5 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
6 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

7 59. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
8 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
9 owed for rest periods that they were not authorized or permitted to take.

10 60. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
11 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
12 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
13 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

14 **FIFTH CAUSE OF ACTION**

15 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

16 61. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 62. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
20 Wage Orders.

21 63. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
22 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
23 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
24 discharge immediately upon termination. Class Members who resigned were entitled to payment
25 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
26 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
27 unpaid at the time of resignation.

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64. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

65. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation.

66. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to waiting time penalties from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of thirty (30) days.

67. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

68. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties, interest, and their costs of suit, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

69. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

70. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

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1 71. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
2 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
4 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
6 employer, among other things.

7 72. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
8 before the filing of the Complaint in this Action through the present, Defendants failed to comply
9 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
10 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
11 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
14 other things.

15 73. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
16 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
17 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
18 provided wage statements that Defendants knew were not accurate.

19 74. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
20 suffered injury. The absence of accurate information on Class Members' wage statements at times
21 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
22 mathematical computations to determine the amount of wages owed; causes difficulty and expense
23 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
24 about wages and amounts deducted from wages to state and federal governmental agencies, among
25 other things.

26 75. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
27 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
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1 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
2 pay period, not to exceed an aggregate \$4,000.00 per employee.

3 76. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
4 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
5 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
6 attorneys' fees, and costs of suit.

7 **SEVENTH CAUSE OF ACTION**

8 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

9 77. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and
10 incorporate each by reference as though fully set forth hereat.

11 78. At all relevant times, Plaintiff and Class Members were employees or former
12 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

13 79. Labor Code section 204 provides that “[l]abor performed between the 1st and 15th
14 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month
15 during which the labor was performed, and labor performed between the 16th and the last day,
16 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
17 month.”

18 80. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
19 independent and apart from, any other penalty provided in this article, every person who fails to pay
20 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
21 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
22 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
23 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
24 percent of the amount unlawfully withheld.”

25 81. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
26 before the filing of the Complaint in this Action through the present, Defendants employed policies
27 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with
28 Labor Code section 204.

82. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to recover penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200) for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

83. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties, interest, and their costs of suit, as well.

EIGHTH CAUSE OF ACTION

(Violation of Labor Code § 2802 – Against All Defendants)

84. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

85. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

86. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . .”

87. For three (3) years prior to the filing of the Complaint in this Action through the present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times, necessary expenditures or losses in direct consequence of the discharge of their duties or at the obedience to the directions of Defendants that included, without limitation: mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using cellular phones for work-related purposes; and purchasing tools/supplies necessary to perform work duties.

88. During that time period, Plaintiff is informed and believes, and based thereon alleges that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class Members for those losses and/or expenditures.

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1 89. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
2 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
3 herein-described losses and/or expenditures.

4 90. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
5 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
6 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
7 costs of suit.

NINTH CAUSE OF ACTION

(Violation of Labor Code § 227.3 – Against All Defendants

91. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereon.

12 92. According to Labor Code section 227.3, whenever a contract of employment or
13 employer policy provides for paid vacations, and an employee is terminated without having taken
14 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
15 accordance with such contract of employment or employer policy respecting eligibility or time
16 served.

17 93. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
18 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
19 that Plaintiff's employment contract with Defendants included paid vacations.

94. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

95. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

96. As a further proximate result of Defendants' above-described acts and/or omissions, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and prejudgment interest.

TENTH CAUSE OF ACTION

(Unfair Competition – Against All Defendants)

97. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

98. Plaintiff is informed and believes, and based thereon alleges that the unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

99. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class Members have suffered injury in fact and lost money or property.

100. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

101. Plaintiff and Class Members are entitled to costs of suit under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

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1 **DEMAND FOR JURY TRIAL**

2 102. Plaintiff demands a trial by jury on all causes of action contained herein.

3 **PRAYER**

4 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
5 against Defendants as follows:

- 6 A. An order certifying this case as a Class Action;
- 7 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
8 counsel as class counsel;
- 9 C. Damages for all wages earned and owed, including minimum and overtime wages
10 and unpaid wages for vested vacation time, under Labor Code sections 510, 1194,
11 1197 and 1199 and 227.3;
- 12 D. Liquidated damages pursuant to Labor Code sections 1194.2;
- 13 E. Damages for unpaid premium wages from missed meal and rest periods under,
14 among other Labor Code sections, 512, and 226.7;
- 15 F. Penalties for inaccurate wage statements under Labor Code sections 226,
16 subdivision (e) and 558.1;
- 17 G. Waiting time penalties under Labor Code sections 203;
- 18 H. Penalties to timely pay wages under Labor Code section 210;
- 19 I. Damages under Labor Code sections 2802 and 558.1;
- 20 K. Preliminary and permanent injunctions prohibiting Defendants from further
21 violating the California Labor Code and requiring the establishment of appropriate
22 and effective means to prevent future violations;
- 23 L. Restitution of wages and benefits due which were acquired by means of any unfair
24 business practice, according to proof;
- 25 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 26 N. For attorneys' fees in prosecuting this action;
- 27 O. For costs of suit incurred herein; and
- 28 P. For such other and further relief as the Court deems just and proper.

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Dated: August 4, 2021

BIBIYAN LAW GROUP, P.C.

BY: Mahlai Anbari
MALALAI ANBARI
DAVID D. BIBIYAN
Attorneys for Plaintiff ANDRE CLARIZIO on behalf
of himself and all others similarly situated