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FILED
Superior Court of California
County of Los Angeles

02/09/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. Bivins Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

OSCAR ARMENTA, individually, and on behalf
of all others similarly situated;

Plaintiff,

v.

ART DECK, INC., a California corporation;
ARTURO RUBINSTEIN, an individual; and
DOES 1 through 100, inclusive;

Defendants.

Case Number: 21STCV30691

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Overtime Wages (Class Claim; Cal. Lab. Code §§ 510 and 1198 *et seq.*)
2. Failure to Pay Minimum Wage (Class Claim; Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198, *et seq.*);
3. Failure to Pay Meal Period Compensation (Class Claim; Cal. Lab. Code §§ 226.7, 512(a) & 1198 *et seq.*);
4. Failure to Pay Rest Period Compensation (Class Claim; Cal. Lab. Code §§ 226.7 & 1198 *et seq.*);
5. Failure to Furnish Accurate Wage and Hour Statements (Class Claim; Cal. Lab. Code § 226);
6. Failure to Pay Wages Upon Discharge (Class Claim; Cal. Lab. Code §§ 201 & 202, *et seq.*);
7. Unfair Competition (Class Claim; Business and Professions Code § 17200 *et seq.*);
8. Violation of Private Attorney General Act of 2004, California Labor Code §2698 *et seq.*;

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff OSCAR ARMENTA (“Plaintiff”), individually, and on behalf of himself and all others similarly situated, and hereby complains against Defendants ART DECK, INC., ARTURO RUBINSTEIN, and DOES 1 through 100, inclusive, (collectively “Defendants”) and each of them, and alleges as follows:

NATURE OF THE ACTION

1. This is a class action complaint for wage and labor violations arising out of, among other things, Defendants’ failure to pay wages, failure to pay overtime, and failure to provide meal and rest breaks to their employees, etc.

2. As more fully set forth herein, Defendants failed to pay for all time worked every pay period, specifically including required minimum wages, daily overtime, and double-time; failed to provide off-duty meal and rest periods to their employees in accordance with the California Labor Code §226.7 and applicable Industrial Wage Orders; failed to pay their employees one hour of pay at their regular rate of compensation for each instance that Defendants failed to provide statutorily mandated rest periods and off-duty meal periods; failed to timely pay employees their final wages; and for penalties arising from Defendants issuing to their employees inaccurate wage statements. Further, Defendants willfully and wrongfully misclassified Plaintiff and other employees as independent contractors.

3. Plaintiff seeks to represent the following Class: all current and former California employees of Defendants who were employed in California, at any time beginning four (4) years prior to the filing of the Complaint through the date notice is mailed to the Class (the “Class period”), and who worked as an employee for Defendants.

JURISDICTION

4. This class action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

1 5. This Court has personal jurisdiction over Defendants because Defendants engaged in wrongful
2 conduct in the State of California, which caused harm to Plaintiff in this state.

3 6. Venue is proper in this Court, because Defendants employ persons in this county, employed
4 Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this
5 action occurred in this county. Cal. Civ. Proc. Code § 395.

6 **PARTIES**

7 7. Plaintiff OSCAR ARMENTA is an individual and a resident and citizen of the State of
8 California, County of Los Angeles.

9 8. Plaintiff is informed and believes, and based thereon alleges that Defendant ART DECK, INC.
10 is a California corporation, and at all times hereinafter mentioned, an employer whose employees are
11 engaged throughout this county. On information and belief, this defendant is organized and existing
12 under the laws of the State of California with its principle place of business located at 20800 Dearborn
13 St. Chatsworth, CA 91311.

14 9. Plaintiff is informed and believes, and based thereon alleges that Defendant ARTURO
15 RUBINSTEIN, is an individual who resides and is a citizen of the State of California and at all times
16 hereinafter mentioned, the owner and/or operator of ART DECK, INC., in the state of California. This
17 Defendant is being sued under California Labor Code 558.1. On information and belief, this defendant
18 operates a location at 20800 Dearborn St. in the city of Chatsworth. Defendant RUBINSTEIN's actions
19 were instrumental in instituting and maintaining the illegal policies and practices outlined herein.
20 Further, Defendant RUBINSTEIN's actions/inactions violated and caused to be violated various
21 provisions of the California Labor Code and Wage Orders of the Industrial Welfare Commission,
22 including but not limited to violations of California Labor Code Sections 203, 226, 226.7, 1194, and
23 2802. Defendant RUBINSTEIN exercised control over the hours worked and working conditions of
24 drivers, had the power to hire and fire class members, supervised and controlled the work schedules of
25 aggrieved employees, determined the rate of pay for aggrieved employees, maintained the employment
26 records of aggrieved employees, and exercised control over the quality standards, speed, and other
27 operative details of tasks performed aggrieved employees. At all relevant times, Defendant
28 RUBINSTEIN possessed the authority to establish and change formal corporate policies that affected

1 a substantial portion of the company that are of the type likely to come to the attention of corporate
2 leadership.

3 10. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
4 Defendants and DOES 1 through 100, are and were individuals, sole proprietorships, corporations,
5 business entities, persons, and partnerships, licensed to do business and/or actually doing business in
6 the State of California.

7 11. Plaintiff is unaware of the true names and capacities, whether informed and believed and
8 thereon alleged that at all times herein mentioned Defendants and DOES 1 through 100, are and were
9 individual, corporate, associate, or otherwise, of the defendants sued as DOES 1 through 100, inclusive.
10 They are unknown to Plaintiff and therefore Plaintiff sues them by such fictitious names. Plaintiff will
11 amend this complaint to allege their true names and capacities when they become known to Plaintiff.
12 Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100, inclusive, are indebted
13 to Plaintiff as hereinafter alleged, and that Plaintiff's rights against such fictitiously named Defendants
14 arise from such indebtedness.

15 12. Plaintiff is informed and believes, and on that basis alleges that each Defendants sued in this
16 action, including each Defendants sued by the fictitious names DOES 1 through 100, inclusive, is
17 responsible and liable in some manner for the occurrences, controversies and damages alleged below.

18 13. All references to "Defendant," "Defendants," "company," "company's," "employer" or any
19 similar language, whether singular or plural, shall mean "Defendants, and each of them" when used
20 throughout this complaint.

21 14. At all times herein mentioned, Defendants participated in the doing of the acts and omissions
22 herein alleged, were acting within the purpose, course and scope of said agency and/or employment to
23 have been done by the named Defendant; and furthermore, the Defendants, and each of them, were the
24 agents, managing agents, servants, employees, alter-egos, co-conspirators, joint-venturers, partners,
25 successors in interest and predecessors in interest of each of the other Defendants.

26 15. At all times herein mentioned, Defendants were acting within the purpose, course and scope of
27 said agency and/or employment so as to invoke vicarious liability and *respondeat superior* liability
28

1 among other theories of liability to hold Defendants liable and responsible for the injuries and damages
2 to Plaintiff.

3 16. At all times herein mentioned, Defendants were members of and engaged in a joint venture,
4 partnership and common enterprise, and acting within the purpose, course and scope of, and in pursuit
5 of, said joint venture, partnership and common enterprise.

6 17. At all times herein mentioned, the acts and omissions of various Defendants contributed to the
7 various acts and omissions of each and all of the other Defendants in proximately causing the injuries
8 and damages as herein alleged.

9 18. At all times herein mentioned, Defendants, including all Defendants' managing agents, officers
10 and directors, had advanced knowledge of and/or ratified each and every act or omission complained
11 throughout this complaint. At all times relevant herein, Defendants and/or their managing agents,
12 officers or directors committed and/or participated in the wrongful acts and omissions complained of
13 throughout this complaint or ratified such acts and omissions. At all times herein mentioned, the
14 Defendants aided and abetted the acts and omissions of each and all of the other Defendants in
15 proximately causing the damages as herein alleged.

16 19. Plaintiff is informed and believes and thereon alleges that there exists such a unity of interest
17 and ownership between Defendants that the individuality and separateness of Defendants have ceased
18 to exist.

19 20. The business affairs of Defendants are, and at all times relevant hereto were, so mixed and
20 intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion.

21 21. The recognition of the separate existence of any Defendants would not promote injustice, in
22 that it would permit that Defendants to wrongfully insulate itself from liability to Plaintiff.

23 22. Under California law, Defendants are jointly and severally liable as employers for the violations
24 alleged herein because they have each exercised sufficient control over the wages, hours, working
25 conditions, and employment status of Plaintiff and class members. Each Defendants had the power to
26 hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or
27 conditions of employment, determined their rate of pay, and maintained their employment records.
28 Defendants suffered or permitted Plaintiff and class members to work and/or "engaged" Plaintiff and

1 class members so as to create a common law employment relationship. As joint employers of Plaintiff
2 and class members, Defendants are jointly and severally liable for the civil penalties and all other relief
3 available to Plaintiff and class members under the law.

4 23. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants,
5 and each of them, have acted as joint employers with respect to Plaintiff and class members because
6 Defendants have:

- 7 a. jointly exercised meaningful control over the work performed by Plaintiff and class members;
- 8 b. jointly exercised meaningful control over Plaintiff and class members' wages, hours, and
9 working conditions, including the quantity, quality standards, speed, scheduling, and operative
10 details of the tasks performed by Plaintiff and class members;
- 11 c. jointly required that Plaintiff and class members perform work which is an integral part of
12 Defendants' businesses; and
- 13 d. jointly exercised control over Plaintiff and class members as a matter of economic reality in that
14 Plaintiff and class members were dependent on Defendants, who shared the power to set the
15 wages of Plaintiff and class members and determine their working conditions, and who jointly
16 reaped the benefits from the underpayment of their wages and noncompliance with other
17 statutory provisions governing their employment.

18 24. Plaintiff is informed and believes, and further alleges, that at all relevant times there has existed
19 a unity of interest and ownership between Defendants such that any individuality and separateness
20 between the entities has ceased.

21 25. Defendants are therefore alter egos of each other.

22 26. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the
23 corporate privilege, and would promote injustice by protecting Defendants from liability for the
24 wrongful acts committed by it.

25 27. Plaintiff further alleges, upon information and belief, that Defendants are alter egos of each
26 other.

27 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

28 28. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons

1 similarly situated, and thus seeks class certification under California Code of Civil Procedure section
2 382.

3 29. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized
4 by California law.

5 30. Plaintiff's proposed class consists of and is defined as follows:

6 "All persons who are or were employed by Defendants as non-exempt employees in
7 California within four years prior to the filing of the Complaint until the date of trial
8 ("Class")."

9 31. Plaintiff's proposed subclass consists of and is defined as follows:

10 "All persons who are or were employed by Defendants as non-exempt employees in
11 California within one year prior to the filing of the Complaint until the date of trial
12 ("Subclass")."

13 32. Members of the Class and Subclass will hereinafter be referred to as "class members."

14 33. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses
15 as appropriate based on further investigation, discovery, and specific theories of liability.

16 34. This action has been brought and may be properly maintained as a class action pursuant to the
17 provisions of Code of Civil Procedure § 382 (hereinafter "§ 382") and other applicable law.

18 35. **Numerosity of the Class:** Pursuant to § 382, members of the Class are so numerous that their
19 individual joinder is impracticable. Plaintiff estimates, on information and belief, that there are over
20 fifty (50) current and/or former aggrieved employees of Defendants employed in California during
21 the Class period. The precise number of Class members and their addresses are unknown to Plaintiff
22 or will be known to Plaintiff through discovery. Class members may be notified of the pendency of
23 this action by mail, electronic mail, the Internet, or published notice.

24 36. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant to § 382,
25 common questions of law and fact exist as to all members of the Class. These questions predominate
26 over any questions affecting only individual Class members. These common legal and factual questions
27 include:
28

- a. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour worked or part thereof during which they were required to perform acts at the direction and for the benefit of Defendants;
- b. Whether Plaintiff and each member of the Class were not paid adequate overtime and/or double-time wages during the Class Period;
- c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff for the total hours worked during the Class period;
- d. Whether Defendants violated Labor Code § 226.7 and/or § 512 and engaged in a pattern or practice of failing to provide timely, off-duty thirty (30) minute meal periods to Plaintiff and members of the Class during the Class period;
- e. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members of the Class during the Class period from taking statutory off-duty thirty (30) minute meal periods on a timely basis;
- f. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff and the members of the Class during the Class period for missed, untimely or on-duty meal periods as required by California law;
- g. Whether Defendants violated the applicable California Industrial Welfare Commission by failing to provide Plaintiff and the members of the Class with timely off-duty thirty (30) minute meal periods;
- h. Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 by failing to provide Plaintiff and the members of the Class who worked as employees in California during the Class period with their statutory off-duty meal periods on a timely basis;
- i. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized wage statements to Plaintiff and members of the Class that failed to include payments for missed, untimely, and/or on-duty meal periods among wages earned throughout the Class period;
- j. Whether Defendants violated Labor Code § 226 by issuing inaccurate itemized wage statements to Plaintiff and members of the Class to the detriment of Plaintiff and the Class;

- 1 k. Whether Defendants failed to provide ten (10) minute, uninterrupted rest periods as
2 contemplated by California law for work periods in excess of four (4) hours or every major
3 fraction thereof;
- 4 l. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiff
5 and the members of the Class during the Class period for failing to provide ten (10) minute,
6 uninterrupted rest periods as contemplated by California law for work periods in excess of four
7 (4) hours;
- 8 m. Whether Defendants violated Labor Code §§ 218.5, 204, 216, 1197, and 1198 due to failure to
9 compensate Plaintiff and the Class for those acts Defendants required Plaintiff and members of
10 the Class to perform for the benefit of Defendants; and
- 11 n. The nature and extent of class-wide injury and the measure of damages for the injury.

12 37. **Typicality:** Plaintiff's claims are typical of the claim of the members of the subclasses they
13 represent to the same unlawful business practices as other employees employed by Defendants during
14 the liability period. Plaintiff and the members of the sub classes they represent sustained the same types
15 of damages and losses. Plaintiff is qualified to, and will, fairly and adequately protect the interests of
16 each class member with whom they have a well- defined community of interest, and Plaintiff's claims
17 (or defenses, if any are typical of all class members as demonstrated herein).

18 38. **Adequacy:** Plaintiff is an adequate representative of the Class he seeks to represent because his
19 interests do not conflict with the interests of the class members Plaintiff seeks to represent. Plaintiff has
20 retained counsel competent and experienced in complex class action litigation and Plaintiff intends to
21 prosecute this action vigorously. The interests of members of each Class will be fairly and adequately
22 protected by Plaintiff and his counsel. Plaintiff is qualified to, and will, fairly and adequately protect
23 the interests of each class member with whom he has a well-defined community of interest and
24 typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make
25 known to the Court any relationship, conflicts or differences with any class member. Plaintiff's
26 attorneys, the proposed class counsel, are versed in the rules governing class action discovery,
27 certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will
28

1 continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the
2 prosecution of this action for the substantial benefit of each class member.

3 39. **Superiority and Substantial Benefit:** The class action is superior to other available means for
4 the fair and efficient adjudication of Plaintiff and the Class members' claims. The damages suffered by
5 each individual class member may be limited. Damages of such magnitude are small given the burden
6 and expense of individual prosecution of the complex and extensive litigation necessitated by
7 Defendants conduct. Further, it would be virtually impossible for the class members to redress the
8 wrongs done to them on an individual basis. Even if members of the class members themselves could
9 afford such individual litigation, the court system could not. Individualized litigation increases the delay
10 and expense to all parties and the court system, due to the complex legal and factual issues of the case.
11 By contrast, the class action device presents far fewer management difficulties, and provides the
12 benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

13 40. **Public Policy Considerations:** Public Policy considerations violate employment and labor laws
14 every day. Current employees are often afraid to assert their rights out of fear of direct or indirect
15 retaliation. Former employees are fearful of bringing actions because they believe their former
16 employers might damage their future endeavors through negative references and/or other means. Class
17 actions provide the class members who are not named in the complaint with a type of anonymity that
18 allows for the vindication of their rights while simultaneously protecting their privacy.

19 41. The Class should also be certified because:

- 20 a. The prosecution of separate actions by individual members of the Class would create a risk of
21 inconsistent or varying adjudications with respect to individual class members which would
22 establish incompatible standards of conduct for Defendants;
- 23 b. The prosecution of separate actions by individual members of the Class would create a risk of
24 adjudication with respect to them, which would, as a practical matter, be dispositive of the
25 interests of the other class members not parties to the adjudications, or substantially impair or
26 impede their ability to protect their interests; and

1 c. Defendants have acted to refuse to act on grounds generally applicable to the Class, and/or the
2 general public, thereby making appropriate final and injunctive relief with respect to the Classes
3 as a whole.
4

5 **PRIVATE ATTORNEY GENERAL ACT OF 2004**

6 **(Cal. Lab. Code section 2698 *et seq.*)**

7 42. In 2003, California's Legislature declared that, "staffing levels for state labor law
8 enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up
9 with the growth of the labor market in the future. It is therefore in the public interest to provide that
10 civil penalties for violations of the Labor Code may also be assessed and collected by aggrieved
11 employees acting as private attorneys general, while also ensuring that state labor law enforcement
12 agencies' enforcement actions have primacy over any private enforcement efforts undertaken
13 pursuant to this act." *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 337-338, citing Stats.
14 2003. Ch. 906 § 1.

15 43. In response, California's Legislature passed the Private Attorney General Act of 2004
16 ("PAGA"), which "was adopted to empower aggrieved employees, acting as private attorneys
17 general, to seek civil penalties for Labor Code violations, penalties which previously could be
18 assessed only by state agencies." *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 336. "Thus,
19 PAGA empowers or deputizes an aggrieved employee to sue for civil penalties 'on behalf of himself
20 or herself and other current or former employees' as an alternative to enforcement by the LWDA."
21 *Id.* At 337 citing to Cal. Lab. Code 2699(a). Class action requirements do not apply to representative
22 actions brought by one employee on behalf of other current or former employees under the PAGA.
23 *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 984.

24 44. Prior to bringing the action, the aggrieved employee shall give written notice by certified
25 mail to the Labor and Workforce Development Agency and the employer of the specific provisions
26 of this code alleged to have been violated, including the facts and theories to support the alleged
27 violation. *Cal. Lab. Code* 2699.3 (c)(1). The agency shall notify the employer and the aggrieved
28 employee or representative by certified mail that it does not intend to investigate the alleged violation

1 within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon
2 receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the
3 notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action
4 pursuant to Section 2699.

5 45. The aggrieved employee is entitled to keep 25% of the civil penalties recovered in the PAGA
6 action and the remaining 75% goes to the Labor and Workforce Development Agency. *Cal. Lab.*
7 *Code* 2699(i).

8 46. On August 3, 2021, Plaintiff OSCAR ARMENTA gave written notice by certified mail to
9 Defendants ART DECK, INC. and ARTURO RUBINSTEIN, and filed online directly to the Labor
10 and Workforce Development Agency (“LWDA”), regarding the specific conditions of the codes
11 alleged to have been violated, including the facts and theories to support the alleged violations.
12 Attached hereto as “**Exhibit A**”, is a true and correct copy of Plaintiff’s written PAGA notice letter.

13 14 **GENERAL FACTS AND ALLEGATIONS**

15 47. This is an action brought by Plaintiff, individually, on behalf of himself and all others similarly
16 situated, pursuant to California statutory, decisional, and regulatory laws.

17 48. Defendants own and operate a construction business.

18 49. Plaintiff was a loader/laborer in Defendants’ construction business since approximately October
19 2018.

20 50. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the conduct
21 by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on the basis
22 that Defendants violated such statutes, decisional law, and regulations.

23 51. Defendants hired Plaintiff and the other class members and employed them as independent
24 contractors who receive 1099s. As a result, Defendants failed to pay Plaintiff and other class members
25 minimum wage, overtime wages, double time wages, and failed to provide Plaintiff and other class
26 members with meal and rest breaks.

1 52. Plaintiff and other class members do not meet the qualifications to be independent contractors.
2 Plaintiff and other class members work 40+ hours per week exclusively for Defendants and perform
3 crucial work for Defendants' business.

4 53. Plaintiff and other class members further failed to receive adequate meal and rest breaks in
5 accordance with California law. Defendants failed to compensate Plaintiff and the other class members
6 for all hours worked, missed, short, late, and/or interrupted meal periods and/or rest breaks.

7 54. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set
8 work rules and conditions governing Plaintiff's and the other class members' employment, and to
9 supervise their daily employment activities. Likewise, Defendants, supplied Plaintiff and other class
10 members with most of the instrumentalities, tools, and the place for the employees to do their work.

11 **Wage and Hour Allegations:**

12 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a
13 uniform policy of wage abuse against their hourly-paid or non-exempt employees within the State of
14 California. This uniform policy involved, *inter alia*, failing to pay them for all hours worked, missed,
15 short, late, and/or interrupted meal periods and rest breaks in violation of California law.

16 56. Plaintiff is informed and believes, and based thereon alleges, that at all material times set forth
17 herein, Defendants were advised by skilled lawyers and other professionals, employees, and advisors
18 knowledgeable about California and federal labor and wage law and employment and personnel
19 practices, and about the requirements of California and federal law.

20 57. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
21 have known that Plaintiff and the other class members were entitled to receive certain wages for
22 overtime and/or double-time compensation and that they were not receiving wages for overtime and/or
23 double-time compensation.

24 58. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide
25 Plaintiff and the other class members the required rest and meal periods during the relevant time period
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27
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1 as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any
2 and all applicable penalties.

3 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
4 have known that Plaintiff and the other class members were entitled to receive all meal periods or
5 payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay
6 when a meal period was missed, and they did not receive all meal periods or payment of one additional
7 hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was
8 missed.

9 60. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
10 have known that Plaintiff and the other class members were entitled to receive all rest periods or
11 payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay
12 when a rest period was missed, and they did not receive all rest periods or payment of one additional
13 hour of pay at Plaintiff's and the other class members' regular rate of pay when a rest period was
14 missed.

15 61. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
16 have known that Plaintiff and the other class members were entitled to receive all wages owed to them
17 upon discharge or resignation, including overtime, minimum wages, meal and rest period premiums,
18 and they did not, in fact, receive all such wages owed to them at the time of their discharge or
19 resignation.

20 62. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
21 have known that Plaintiff and the other class members were entitled to receive all wages owed to them
22 during their employment. Plaintiff and the other class members did not receive payment of all wages,
23 including overtime and minimum wages and meal and rest period premiums, within any time
24 permissible under California Labor Code section 204.

25 63. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
26 have known that Plaintiff and the other class members were entitled to receive complete and accurate
27 wage statements in accordance with California law, however they did not receive complete and accurate
28

1 wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total
2 number of hours worked by Plaintiff and the other class members.

3 64. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
4 have known that Defendants had to keep complete and accurate payroll records for Plaintiff and the
5 other class members in accordance with California law, but, in fact, did not keep complete and accurate
6 payroll records.

7 65. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should
8 have known that they had a duty to compensate Plaintiff and the other class members pursuant to
9 California law, and that Defendants had the financial ability to pay such compensation, but willfully,
10 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other class
11 members that they were properly denied wages, all in order to increase Defendant's profits.

12 66. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit
13 the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under
14 this article."

15 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

16 **Failure to Pay Overtime**

17 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 510, 1198 *et seq*, and 1199.)**

18 67. Plaintiff hereby incorporate all other paragraphs of this complaint herein as if set forth in full.

19 68. During the relevant time period, Defendants intentionally and willfully failed to maintain a
20 policy that compensates Plaintiff and the other class members for all hours worked at the proper rate,
21 including overtime and double time.

22 69. Specifically, Plaintiff and the other class members worked shifts of longer than eight hours a
23 day or forty hours a week without being paid overtime or double time at the proper rate in accordance
24 with California law.

25 70. As a result of violations of California Labor Code §§ 510, 1194, and Industrial Welfare
26 Commission applicable Wage Orders for failure to pay overtime, Defendants are liable for civil
27 penalties pursuant to California Labor Code §§ 558 and 2698 *et seq*.
28

1 71. Such a pattern, practice and uniform administration of corporate policy regarding illegal
2 employee compensation as described herein is unlawful and creates an entitlement to recovery by
3 Plaintiff and the other class members the unpaid balance of the full amount of overtime and/or
4 double-time premiums owing, including interest thereon, penalties, attorneys' fees and costs of suit
5 pursuant to the mandate of California Labor Code section 1194.

6 72. Further, under California Labor Code §§ 1199(a) and (c) and 2699.5 et seq., an employer
7 who "requires or causes any employee to work for longer hours than those fixed" or "violates or
8 refuses or neglects to comply with any provision of the Labor Code regarding employees' wages,
9 hours, and working conditions, is subject to PAGA penalties. As described herein, Defendants
10 required Plaintiff and other class members to work hours in excess of eight (8) in a day and forty
11 (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed
12 to pay minimum wage, failed to appropriately account for and pay for commissions, and have
13 violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby
14 violating § 1199(b)). Defendants are liable for civil penalties pursuant to California Labor Code §
15 2698 et seq.

16 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

17 **Failure to Pay Minimum Wage**

18 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1198 et seq.)**

19 73. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

20 74. Pursuant to Labor Code §§ 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or
21 permit a California employee to work without paying wages at the proper minimum wage for all time
22 worked.

23 75. At all times material hereto, "hours worked" included "the time during which an employee is
24 subject to the control of an employer, and includes all the time the employee is suffered or permitted
25 to work, whether or not required to do so." Defendants failed to maintain a policy that compensates
26 Plaintiff and the other class members in an amount equal to or greater than the minimum wage for all
27 hours worked.

28 76. Plaintiff and the other class members were required to perform certain tasks off-the-clock before

1 or after shifts, for which they were not compensated. Further, Defendants' rounding practices also
2 deprived Plaintiff and others of minimum wages for time worked.

3 77. As a direct and proximate result of Defendants' failure to pay Plaintiff and the class members
4 the minimum wage, Plaintiff and the class members have been damaged in the amount of unpaid
5 minimum wages.

6 78. Pursuant to Labor Code §§ 1194 and 1194.2, Plaintiff and the class members are entitled to
7 recover the full amount of unpaid minimum wages, liquidated damages in an equal amount, interest
8 and attorney's fees, all in a total amount subject to proof at time of trial. In addition, insofar as the
9 failure of Defendants to pay the minimum wage was willful, Plaintiff and the class members who no
10 longer work for Defendants are entitled to waiting time penalties pursuant to Labor Code § 200 *et seq.*

11 79. The aforementioned acts by Defendants were intentional, with the intention on the part of the
12 Defendants to deprive Plaintiff and the class members of their property and/or legal rights and causing
13 injury to them. As a result of Defendants failure to compensate Plaintiff at the minimum wage, pursuant
14 to Labor Code § 1197.1, Plaintiff is entitled to civil penalties from Defendants of \$50 for each underpaid
15 employee for each pay period for which the employee is underpaid, for the initial violation; and \$100
16 for each underpaid employee for each pay period for which the employee is underpaid, for each
17 subsequent violation.

18 80. WHEREFORE, Plaintiff and the class members request relief as hereinafter provided.

19 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

20 **Failure to Provide Meal Periods**

21 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 226.7, 512(a) & 1198 *et seq.*)**

22 81. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

23 82. At all times herein mentioned the Plaintiff and the class members, were non-exempt employees
24 and subject to the meal period provisions.

25 83. Defendants failed to maintain a policy that provided Plaintiff and other class members with off-
26 duty meal periods as required by California law. Plaintiff and other class members regularly worked in
27 excess of five (5) hours a day without being provided at least half-hour meal periods in which they
28 were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Wage Order.

1 84. Defendants failed to pay Plaintiff and other class members the premium compensation
2 mandated by Labor Code § 226.7(b) for these missed meal periods. Some employees were also due a
3 second meal break as they worked in excess of ten (10) hours.

4 85. Plaintiff and other class members would be required to work through their meal breaks, or take
5 short meal breaks, and no premium compensation was provided. Moreover, Defendants failed to
6 provide timely meal periods to Plaintiff and the other class members in that Defendants did not provide
7 first meal periods by the end of the fifth hour of work, and second meal periods by the end of the tenth
8 hour of work.

9 86. Wages are due to employees for “all hours worked” and applicable laws, rules, orders,
10 requirements, and regulations. Plaintiff and the class members demand all applicable reimbursement
11 and penalties for their lost meal breaks, in addition to the one-hour’s compensation due under the wage
12 order. Further, Plaintiff and the class members demand reasonable attorney’s fees and costs of suit,
13 pursuant to Labor Code § 218.5.

14 87. Under California law, meal periods must be recorded unless all operations cease during the
15 scheduled meal periods. Defendants failed to record the meal periods. Plaintiff and the class members
16 are not only entitled to compensation for the lost meal periods, but to the extent that Defendants claim
17 that meal periods were taken which are not documented, Plaintiff and the class members also seek all
18 applicable penalties for Defendants’ failure to keep accurate time records and to issue Plaintiff and the
19 class members accurate earnings statements.

20 88. WHEREFORE, Plaintiff and the class members request relief as hereinafter provided.

21 **FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

22 **Failure to Provide Rest Periods**

23 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 226.7 & 1198 *et seq.*)**

24 89. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

25 90. Defendants failed to maintain a policy that provided Plaintiff and other class members with off-
26 duty rest periods as required by California law. Plaintiff and other class members regularly worked in
27 excess of 3.5 hours or major fraction thereof during their workdays without being provided at least a
28 ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7,

1 512 and the applicable Wage Orders.

2 91. Defendants failed to pay Plaintiff and other class members the premium compensation
3 mandated by Labor Code § 226.7(b) for these missed rest periods. Many employees, including Plaintiff,
4 were forced to skip or take untimely rest breaks without appropriate compensation.

5 92. Plaintiff and the class members are entitled to recover interest on the unpaid rest period wages
6 do to them. Further, they demand reasonable attorney's fees and costs of suit, pursuant to Labor Code
7 § 218.5, plus all appropriate penalties for the wage and hour violations, in addition to the one-hour's
8 compensation as premium pay as provided for by law.

9 93. Plaintiff and the class members are not only entitled to compensation for the lost rest periods,
10 but to the extent that Defendants claim that rest periods were taken which are not documented, they
11 also seek all applicable penalties for Defendants failure to keep accurate time records and to issue them
12 accurate earnings statements.

13 94. WHEREFORE, Plaintiff and the class members request relief as hereinafter provided.

14 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

15 **Failure to Furnish Accurate Wage and Hour Statements**

16 **(Class Claim Against All Defendants; Cal. Lab. Code § 226)**

17 95. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

18 96. At all relevant times herein, California Labor Code section 226(a) provides that every employer
19 shall furnish each of his or her employees an accurate and complete itemized wage statement in writing,
20 including, but not limited to, the name and address of the legal entity that is the employer, the inclusive
21 dates of the pay period, total hours worked, and all applicable rates of pay.

22 97. Further, under California Labor Code § 1174(d), employers must keep "payroll records showing
23 the hours worked daily by and the wages paid to ... employees."

24 98. During the relevant time period, Plaintiff and other class members were deprived of wage
25 statements altogether, or various necessary items of information such as total hours worked, applicable
26 hourly rates, deductions, net wages, period dates, and the employers' address. Likewise, Defendants
27 failed to keep payroll records showing total hours worked and wages paid to Plaintiff and other class
28 members by paying them in part or in full in cash without proper corresponding wage statements.

1 99. Plaintiff's and the other class members work hours, overtime time hours and pay, missed rest
2 or meal break premiums, wages, without limitation, were misreported on their wage statements. As a
3 result of violations of California Labor Code § 226(a).

4 100. Defendants have knowingly and intentionally provided Plaintiff and class members with
5 uniform, incomplete, and inaccurate wage statements. Specifically, Defendants violated sections
6 226(a)(1), 226(a)(5), 226(a)(8), and 226(a)(9). As a result of violations of California Labor Code §
7 226(a), Defendants are liable for civil penalties pursuant to California Labor Code §§ 226.3, 1174.5,
8 and 2698 *et seq.*

9 101. Plaintiff and the class members were damaged by these failures because, among other things,
10 these failures led them to believe that they were not entitled to be paid overtime and/or double-time,
11 even though they were so entitled and because these failures hindered them from determining the
12 amounts of overtime and/or double-time wages owed to them.

13 102. By virtue of Defendants knowing, intentional, and unlawful failure to provide accurate wage
14 statements, Plaintiff and the class members have suffered, and will continue to suffer, damages in
15 amounts, which will be ascertained according to proof at trial.

16 103. Plaintiff and class members are entitled to recover from Defendants the greater of their actual
17 damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an
18 aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

19 104. WHEREFORE, Plaintiff and the class members request relief as hereinafter provided.

20 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

21 **Failure to Pay Wages Upon Discharge**

22 **(Class Claim Against All Defendants; Cal. Lab. Code §§ 201 & 202, *et seq.*)**

23 105. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

24 106. Pursuant to California Labor Code § 201, upon former employee Plaintiff's termination date,
25 Defendants were required to pay Plaintiff and the similarly situated class members all earned wages.

26 107. Defendants failed to pay all compensation due and owing to Plaintiff and other class members
27 at the time employment was terminated. In violations of Labor Code § 201, Defendants failed to pay
28

1 former employees, Plaintiff and the class members, any amount of wages due and owing them, in
2 amounts to be proven at the time of trial, but not in excess of the jurisdiction of this Court.

3 108. Defendants' failure to pay former employees, Plaintiff and the class members the wages due
4 and owing them was willful, and done with the wrongful and deliberate intention of injuring Plaintiff
5 and the class members, from improper motives amounting to malice, and in conscious disregard of
6 Plaintiff's rights. Plaintiff and the class members are thus entitled to recover nominal, actual,
7 compensatory, liquidated damages in amounts according to proof at time of trial, but not in amounts in
8 excess of the jurisdiction of this Court.

9 109. Defendants willful failure to pay Plaintiff and the class members the wages due and owing them
10 constitutes violations of Labor Code §§ 201 and 203, which provides that an employee's wages will
11 continue as a penalty for up to thirty (30) days from the time the wages were due. Therefore, Plaintiff
12 and the class members are entitled to statutory penalties pursuant to Labor Code § 203.

13 110. WHEREFORE, Plaintiff and the class members request relief as hereinafter provided.

14 **SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

15 **Unfair Competition**

16 **(Class Claim Against All Defendants; Violation of California Business & Professions Code §§**
17 **17200 *et seq.*)**

18 111. Plaintiff hereby incorporates all other paragraphs of this complaint herein as if set forth in full.

19 112. Defendants are a "person" as defined by California Business & Professions Code sections
20 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

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

25 114. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying
26 Plaintiff and class members all meal and rest period premium wages due to them under Labor Code
27 section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced
28 enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "dual-

1 purpose' remedy intended primarily to compensate employees, and secondarily to shape employer
2 conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits
3 of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with
4 Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes
5 an unfair business practice in violation of California Business & Professions Code sections 17200 *et*
6 *seq. (Id.)*

7 115. A violation of California Business & Professions Code sections 17200 *et seq.* may be predicated
8 on any unfair business practice. In the instant case, Defendants' policies and practices have violated
9 the spirit of California's meal and rest break laws and constitute acts against the public policy behind
10 these laws.

11 116. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff and class
12 members are entitled to restitution for the class-wide loss of the statutory benefits implemented by
13 section 226.7 withheld and retained by Defendants during a period that commences four years prior to
14 the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits
15 implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant
16 to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

17 117. WHEREFORE, Plaintiff and the Plaintiff Class request relief as hereinafter provided.

18 **EIGHTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

19 **(Violation of the Private Attorneys General Act of 2004,**

20 **California Labor Code § 2698 *et seq.*)**

21 118. Plaintiff hereby incorporates by reference all other allegations contained in this Complaint as
22 though fully set forth herein.

23 119. Plaintiff seeks civil penalties for the above acts, which violate the California Labor Code,
24 under the Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq.*

25 120. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants during
26 the applicable statutory period and suffered one or more of the Labor Code violations set forth herein.
27 Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former
28

1 aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable
2 attorney's fees and costs.

3 121. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted
4 by PAGA and the *California Supreme Court in Arias v. Superior Court*, (2009) 46 Cal.4th 969.
5 Therefore, class certification of the PAGA claims is not required.

6 122. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code
7 provisions:

- 8 a. failure to provide prompt payment of wages to employees upon termination and
9 resignation in violation of Labor Code § 201, 202, 203;
- 10 b. failure to provide itemized wage statements to employees in violation of Labor Code §§
11 226(a), 1174, and 1174.5;
- 12 c. failure to provide meal and rest periods in violation of all applicable IWC wage orders
13 and Labor Code §§ 1174 and 1174.5;
- 14 d. failure to pay overtime wages in violation of all applicable IWC wage orders and Labor
15 Code §§ 510, 558, 1194 and 1198;
- 16 e. failure to provide unpaid balance of full amount of overtime compensation in violation
17 of Labor Code section 1194 and 2698 *et seq.*;
- 18 f. failure to pay minimum wage in violation of all applicable IWC wage orders and Labor
19 Code §§ 1182.12, 1194, and 1197;
- 20 g. Violation of Labor Code section 1199 (a) and (c) and 2699.5 *et seq.*; and
- 21 h. Violations of California Labor Code sections 201; 202; 203; 204; 206; 216; 218.6; 221;
22 226 *et seq.*; 226.8; 432.5; 450; 226.7; 512; 1174; 1174.5; 2802; and all applicable IWC
23 wage orders.

24 123. On August 3, 2021, Plaintiff OSCAR ARMENTA gave written notice by certified mail to
25 Defendants ART DECK, INC. and ARTURO RUBINSTEIN, and filed online directly to the Labor
26 and Workforce Development Agency ("LWDA"), regarding the specific conditions of the codes
27 alleged to have been violated, including the facts and theories to support the alleged violations.
28 Attached hereto as "**Exhibit A**", is a true and correct copy of Plaintiff's written PAGA notice letter.

1 124. The LWDA did not provide notice of its intention to investigate Defendants' alleged
2 violations within sixty-five (65) calendar days of the August 3, 2021 postmark date of the notice sent
3 by Plaintiff. *See* Cal. Labor Code section 2699.3(a)(2)(A).

4 125. With respect to violations of Labor Code section 226(a), Labor Code section 226.3 imposes
5 a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)
6 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
7 employee for each subsequent violation of Labor Code section 226(a).

8 126. With respect to violations of Labor Code sections 510, 512, Labor Code section 558 imposes
9 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
10 violations for each unpaid employee for each pay period for which the employee was underpaid in
11 addition to an amount sufficient to recover underpaid wages, and one hundred dollars (\$100) for
12 subsequent violations for each underpaid employee for each pay period for which the employee was
13 underpaid in addition to an amount sufficient to recover underpaid wages.

14 127. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved
15 employees pursuant to Labor Code section 558(a)(3).

16 128. With respect to violations of Labor Code section 1174, Labor Code section 1174.5 imposes
17 a civil penalty of \$500.

18 129. Labor Code section 2699 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
19 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period,
20 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil
21 penalty is not specifically provided, including Labor Code sections 226.7, 226.8, 1174, 1182.12,
22 1194, 1197, 1198, and 2802.

23 130. WHEREFORE, Plaintiff requests relief as hereafter provided.

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, pray for relief
27 and judgment against Defendants as follows:
28

1. Certification of this action as a class action on behalf of each of the classes alleged in this complaint;
2. For general damages, according to proof, on each cause of action for which such damages are available in an amount not less than \$25,000;
3. For compensatory damages, on each cause of action for which such damages are available, in an amount to be proven at trial in an amount not less than \$25,000;
4. For restoration and restitution of lost wages, statutory penalties, and all other remedies afforded under the Labor Code on all causes of action for violation of the Labor Code;
5. For declaratory and injunctive relief as requested herein;
6. For prejudgment and post-judgment interest according to law;
7. For reasonable attorneys' fees incurred in this action on those causes of action for which such fees are recoverable under the law;
8. For costs of suit incurred in this action;
9. Disgorgement of all gains unjustly gained by Defendants;
10. For such further relief as is appropriate in the interest of justice.

SROURIAN LAW FIRM, PC



DATED: February 9, 2022

By: _____
Daniel Srourian, Esq.
Attorney for Plaintiff and the
[Proposed] Class

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SROURIAN LAW FIRM, PC

By:  _____
Daniel Srourian, Esq.
Attorney for Plaintiff and the
[Proposed] Class Members

EXHIBIT A



WWW.SLFLA.COM

P: 213.474.3800
F: 213.471.4160

LOS ANGELES

3435 Wilshire Blvd. Suite 1710
Los Angeles, CA 90010

ORANGE COUNTY

1503 South Coast Drive, Suite 210
Costa Mesa, California 92626

August 3, 2021

ART DECK, INC.
20800 DEARBORN ST
CHATSWORTH CA 91311

via U.S. Certified Mail

ARTURO RUBINSTEIN
20800 DEARBORN ST
CHATSWORTH CA 91311

via U.S. Certified Mail

Labor and Workforce Development
Agency - Department of Industrial
Relations - Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Filed online at <http://www.dir.ca.gov/>

Re: Oscar Armenta Notice of Labor Code Violations Pursuant to California Labor Code Section 2699 Et. Seq.

Dear Sir or Madam:

Please be advised that **OSCAR ARMENTA** (hereinafter "Plaintiff") has retained Srourian Law Firm, P.C. to represent her and other aggrieved employees for claims against ART DECK, INC. and ARTURO RUBINSTEIN (collectively referred to as "Employers" or "You" and/or referred to with "Your" and "Yours"). You are hereby on notice that Plaintiff seeks all available relief. The following contains the facts and theories supporting Plaintiff's allegations.

Pursuant to the procedures specified in California Labor Code Section 2699.3, Plaintiff claims that You have violated, and/or caused to be violated, several Labor Code provisions, and is therefore liable for civil penalties under California Labor Code 2698 et sq. You deprived Plaintiff and other aggrieved employees of certain protections of the Industrial Welfare Commission Orders, including overtime pay, double time pay, and minimum wage pay. You further failed to provide and/or authorize legally compliant meal and rest periods, failed to reimburse employees for necessary business expenses, failed to timely pay employees their final wages, and failed to provide and maintain accurate paystubs and pay records for employees. You further willfully and wrongfully misclassified Plaintiff and other aggrieved employees as independent contractors, and denied them minimum wage, overtime pay at a correct rate, meal breaks, rest breaks, among other violations, despite Plaintiff and other aggrieved employees did not qualify as independent contractors.

Plaintiff has been employed by You since approximately October 2018 as an hourly non-exempt Loader/Laborer. Plaintiff's job duties included loading and unloading trucks. Throughout Plaintiff's employment, he has been misclassified as an independent contractor, thereby being deprived of the right and benefits of being an employee, such as payment for all time spent working, overtime pay, meal and rest breaks, and the reimbursement of necessary business expenses. Plaintiff continues to be subjected to company policies that deprive him of regular wages, overtime wages, meal and rest breaks, and premiums for missed breaks, as further outlined in this letter.

Misclassification of Employee as Independent Contractor

It is unlawful for any person or employer to willfully misclassify an individual as an independent contractor. Cal. Lab. Code § 226.8(a)(1). This permits Plaintiff to recover a civil penalty of from five thousand dollars (\$5,000) to twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code § 226.8(b)-(c). Plaintiff and others were always employees as evidenced by the following facts: Plaintiff's position requires him to perform loading and unloading duties under Your supervision, control and direction. These duties are directly related to the usual services provided by You. Furthermore, You supplied Plaintiff and others most of the instrumentalities, tools, and the place for the employees to do their work. All work was done under Your supervision and control. Further, the employee's investment in the equipment or materials required were limited or non-existent, no special skills were required of the employees, the employee's services were to be performed for a long period of time with a high degree of permanence in the working relationship, and the parties believed they were maintaining an employer-employee relationship. As a result of these violations, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

You failed to maintain a policy that provides Plaintiff and other aggrieved employees with off-duty meal periods as required by California law. Plaintiff and similarly situated employees regularly worked in excess of five (5) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and applicable Wage Order. You failed to pay Plaintiff and other aggrieved employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods. Some employees were also due a second meal break as they worked in excess of ten (10) hours. They would be required to work through their meal breaks, or take short meal breaks, and no premium compensation was provided. Moreover, You failed to provide timely meal periods to Plaintiff and the other aggrieved employees in that You did not provide first meal periods by the end of the fifth hour of work, and second meal periods by the end of the tenth hour of work. As a result of violations of California Labor Code §§ 226.7 and 512 and applicable Wage Orders, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

You failed to maintain a policy that provides Plaintiff and other aggrieved employees with off-duty rest periods as required by California law. Plaintiff and other aggrieved employees regularly worked in excess of 3.5 hours or major fraction thereof during their workdays without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and the applicable Wage Orders. You failed to pay Plaintiff and other aggrieved employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods. Many aggrieved employees, including Plaintiff, were forced to skip or take untimely rest breaks without appropriate compensation. As a result of violations of California Labor Code §§ 226.7, 512 and applicable Wage Orders, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

You violated California Labor Code § 226(a) by willfully failing to furnish Plaintiff and other aggrieved employees with required full and complete wage statement information by paying employees in part or in full in cash without proper corresponding wage statements. As a result of violations of California Labor Code § 226(a), You are liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Plaintiff and other aggrieved employees were deprived of wage statements altogether, or various necessary items of information such as total hours worked, applicable hourly rates, deductions, net wages, period dates, and the employers' address. Moreover, Plaintiff's and the other aggrieved employees' work hours, overtime time hours and pay, missed rest or meal break

premiums, wages, without limitation, were misreported on their wage statements. As a result of violations of California Labor Code § 226(a), You are liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

You failed to keep payroll records showing total hours worked and wages paid to Plaintiff and the other aggrieved employees by paying them in part or in full in cash without proper corresponding wage statements. Under California Labor Code § 1174(d), employers must keep "payroll records showing the hours worked daily by and the wages paid to ... employees ." Because You did not keep accurate time records reflecting hours worked by Plaintiff and the other aggrieved employees, including but not limited to beginning work prior to opening, and after closing, You are liable for civil penalties pursuant to California Labor Code §2698 *et seq.* To the extent that Your failure to keep accurate payroll records was willful, You are liable for civil penalties under California Labor Code § 1174.5.

Unlawful Failure to Pay Minimum Wage

You failed to maintain a policy that compensates Plaintiff and the other aggrieved employees in an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission applicable Wage Orders. Plaintiff and the other aggrieved employees were required to perform certain tasks off-the-clock before or after shifts, for which they were not compensated. Your rounding practices also deprived Plaintiff and others minimum wages for time worked. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission applicable Wage Orders for failure to pay minimum wage, You are liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Violation of California Labor Code § 1199

Under California Labor Code §§ 1199(a) and (c) and 2699.5 *et seq.*, an employer who "requires or causes any employee to work for longer hours than those fixed" or "violates or refuses or neglects to comply with any provision of the Labor Code regarding employees' wages, hours, and working conditions, is subject to PAGA penalties. As described above, You required Plaintiff and other aggrieved employees to work hours in excess of eight (8) in a day and forty (40) in a week (thereby violating § 1199(a)), failed to provide adequate rest and meal breaks, failed to pay minimum wage, failed to appropriately account for and pay for commissions, and have violated numerous provisions of the Labor Code pertaining to employee wages and hours (thereby violating § 1199(b)). Accordingly, You are liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Overtime/Double Time

You failed to maintain a policy that compensates Plaintiff and the other aggrieved employees for all hours worked at the proper rate, including overtime and double time. Specifically, Plaintiff and the other aggrieved employees worked shifts of longer than eight

hours a day or forty hours a week without being paid overtime or double time at the proper rate in accordance with California law. As a result of violations of California Labor Code §§ 510, 1194, and Industrial Welfare Commission applicable Wage Orders for failure to pay overtime, You are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Pay Wages Due Upon Termination

You violated California Labor Code § § 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and other aggrieved employees at the time employment was terminated. You willfully failed to pay Plaintiff and other aggrieved employees who are no longer employed by You all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. Plaintiff's and other aggrieved employees' overtime work were deliberately ignored, and payment avoided by You. Pursuant to §§ 203 and 256 of the Labor Code, Plaintiff and the other aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Your "willful" failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code. Additionally, because You violated California Labor Code §§ 201, 201and 203 of the Labor Code, You are liable for civil penalties pursuant to California Labor Code § 2698 et seq.

Unlawful Failure to Provide Unpaid Balance of Full Amount of Overtime Compensation

As described above, You required Plaintiff and the other aggrieved employees to work hours in excess of eight hours in a day and forty in a week but have not paid these employees overtime compensation. As a result, Plaintiff and other aggrieved employees have been denied "the unpaid balance of the full amount of this ... overtime compensation" as required by California Labor Code §1194, and You are liable for civil penalties pursuant to California Labor Code §2698 *et seq.*

Violation of Labor Code § 204

California Labor Code § 204 states:

All wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. 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 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.

By failing to pay Plaintiff and the other aggrieved employees all minimum wages, overtime wages, double time wages, and break premiums, You violated Labor Code § 204, and are liable for penalties as such.

Violation of Labor Code § 216

California Labor Code § 216 states:

In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who:

(a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made.

(b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.

By failing to pay Plaintiff and the other aggrieved employees all minimum wages, overtime wages, double time wages, and break premiums You violated Labor Code § 216, and are liable for penalties as such.

Conclusion

You violated or caused to be violated a number of California wage and hour laws. Plaintiff therefore intends to file civil claims for the aforementioned violations of the Labor Code and other law. Plaintiff requests the agency review this notice per PAGA's provisions.

Sincerely,
SROURIAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Daniel Srourian', with a stylized flourish at the end.

Daniel Srourian, Esq.



Daniel Strourian <daniel@slfla.com>

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "daniel@slfla.com" <daniel@slfla.com>

Tue, Aug 3, 2021 at 3:53 PM

Thank you for your payment.

Order Information
Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-840172-21
Order Number: ORD-000129382
Total
Card Type:
Date: 8/3/2021

Billing Information

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On the below-indicated date, I served the following documents:

on the interested parties in said action by placing a true and correct copy, and addressed as set forth on the attached Service List and delivered by one or more of the means set forth below:

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

Patrick E. White III

Counsel	Representing
KAUFMAN DOLOWICH & VOLUCK LLP Brian D. Peters, Esq. [SBN 174688] Amir D. Benakote, Esq. [SBN 277158] Laura P. Birnbaum, Esq. [SBN 310835] 11755 Wilshire Blvd., Suite 2400 Los Angeles, California 90025 Telephone: 310-775-6522 Facsimile: 310-575-9720 Email: bpeters@kdvlaw.com Email: abenakote@kdvlaw.com Email: lbirnbaum@kdvlaw.com	<i>Attorney for All Defendants</i>