

To: +15102671546

Page: 03 of 28

2021-09-16 23:10:47 GMT

12132892815

From: Julian Burns King

FILED BY FAX
ALAMEDA COUNTY

September 17, 2021

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG211136211 Julian Burns King (Bar No. 298617)
julian@kingsiegel.com2 Elliot J. Siegel (Bar No. 286798)
3 elliot@kingsiegel.com**KING & SIEGEL LLP**4 724 S. Spring Street, Suite 201
Los Angeles, CA 90014

5 tel: (213) 465-4802

6 fax: (213) 465-4803

7 Attorneys for Plaintiff and the Putative Class

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ALAMEDA**10 **David Fernandez**, an individual,
11 Plaintiff,

12 vs.

13 **Uni-Fab Industries Inc.**, a California corpora-
14 tion, **Paul R. Hitchcock**, an individual, and
Does 1-10, inclusive,15 Defendants.
16
17
18
19
20
21
22
23
24
25
26
27
28

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime Wages;
- 3) Failure to Provide Meal Periods or Premium Pay in Lieu Thereof;
- 4) Failure to Provide Rest Periods or Premium Pay in Lieu Thereof;
- 5) Failure to Provide and Maintain Complete and Accurate Wage Statements;
- 6) Failure to Pay Wages When Due;
- 7) PAGA Penalties;
- 8) Unfair Competition

INDIVIDUAL COMPLAINT FOR:

- 9) Unlawful Retaliation

Demand for Jury Trial

1 Plaintiff David Fernandez, on behalf of himself and all other similarly-situated current and for-
2 mer employees (“Class Members”), by and through his counsel of record, alleges as follows against
3 Defendant Uni-Fab Industries Inc., LLC (“Uni-Fab” or “Defendant”):

4 **PARTIES**

5 1. Defendant Uni-Fab Industries Inc. (“Uni-Fab”) is a California corporation with its
6 principal business location at 5020 Brandin Court, Fremont, CA 94538. On information and belief,
7 Uni-Fab has employed at least 80 hourly, non-exempt employees in a variety of capacities through the
8 four years leading up to this Complaint.

9 2. Defendant Paul R. Hitchcock is the Chief Executive Officer and Director of Uni-Fab,
10 a resident of the County of Alameda, and, upon information and belief, is the owner of Uni-Fab. Since
11 Mr. Hitchcock is an owner, managing agent, director, or officer of Uni-Fab, and because he caused or
12 directed the acts described herein, he is personally liable for the Labor Code violations and PAGA
13 penalties complained of herein per Labor Code section 558.1.

14 3. Plaintiff David Fernandez (“Plaintiff”) is a resident of Santa Clara County, California.
15 Plaintiff is an hourly, non-exempt employee of Defendant Uni-Fab Industries Inc. working as a Laser
16 Operator since June 2021. Plaintiff is subject to the policies and practices described in this complaint
17 at all times during his employment at Uni-Fab.

18 4. Plaintiff is not currently aware of the names and true identities of defendants Does 1-
19 10. Plaintiff reserves the right to amend this complaint to allege their true names and capacities when
20 this information is available. Each Doe defendant is responsible for the damages alleged pursuant to
21 each of the causes of action asserted, either through its own conduct, or vicariously through the con-
22 duct of others. All further references in this complaint to any of the named Defendants includes the
23 fictitiously named defendants.

24 5. At all times alleged herein, each Defendant was an agent, servant, joint employer, em-
25 ployee, partner, and/or joint venture of every other Defendant and was acting within the scope of the
26 Defendants’ relationship. Moreover, the conduct of every Defendant was ratified by each other De-
27 fendant.

VENUE AND JURISDICTION

6. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California statutes and law, including the Government Code and the Business & Professions Code. Because Defendant conducts substantial business in Alameda County, Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

7. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendant operates a large facility in Fremont, California in the County of Alameda. The unlawful acts alleged have directly affected Plaintiff and similarly situated employees in Alameda County, where earned the wages at issue in this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

CLASS ACTION ALLEGATIONS

8. At all times relevant to this Complaint, Uni-Fab has implemented a uniform time clock rounding policy that results in Class Members being consistently denied minimum wages and overtime compensation for all hours worked. Upon information and belief, rather than paying wages based on time actually worked, Uni-Fab rounds each clock-in and clock-out to the nearest 10- or 15-minute interval, resulting in underpayment when, for example, an employee clocks in a minute early or clocks out a minute late, or both.

9. As a matter of uniform and systemic policy, Uni-Fab failed to authorize and/or permit non-exempt employees to take bona fide meal and rest breaks pursuant to Labor Code § 226.7 based on several uniform policies and practices. First, Plaintiff's rounding policy results in the provision of meal periods that are frequently less than 30 minutes; by rounding time, a meal period of less than 30 minutes is recorded in Uni-Fab's time keeping system as 30 minutes, illegally depriving employees of a full meal period or premium pay in lieu thereof. *Donohue v. Amn Servs.*, 11 Cal.5th 58, 69 (Cal. 2021) ("Small rounding errors can amount to a significant infringement on an employee's right to a 30-minute meal period."). Additionally, upon information and belief, Uni-Fab starts the lunch period while employees on still the facility floor or at their workstation, but requires employees to exit the facility

1 floor and line up to clock out on an insufficient number of time-keeping stations. This results in Uni-
2 Fab counting the time employees stand in line waiting to clock out or clock back in as part of the 30-
3 minute meal period—illegally depriving employees of a full, net 30-minute meal period in which they
4 are relieved all employer control.¹ In conjunction with Uni-Lab’s rounding policy, this policy fre-
5 quently causes employees to cut meal periods short to return to work or risk being disciplined for being
6 late to their workstation. Additionally, upon information and belief, Uni-Fab implemented policies
7 and practices requiring employees to remain on premises during rest periods for a portion of the Class
8 Period.

9 10. In failing to authorize and/or permit meal and rest periods, Uni-Fab has also imple-
10 mented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt
11 employees, notwithstanding its actual knowledge that such employees were uniformly denied compli-
12 ant meal and rest periods.

13 11. Accordingly, Plaintiff brings this action on behalf of himself and as a class action on
14 behalf of the following defined Class:

15 **Non-Exempt Employee Class:**

16 *All persons who worked at least one shift as a non-exempt employee in the State of Califor-*
17 *nia for Defendant from the period starting four years prior to the filing of this Complaint*
18 *and the date of trial (“Class”).*

19 12. Common methods of proof exist for determining these issues on a class-wide basis,
20 including but not limited to, Defendant’s employment records, payroll records, timesheets, policies,
21 and disciplinary records.

22 13. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least
23 100 Class Members have been employed as non-exempt employees by Uni-Fab. The number of Class
24 Members is sufficiently numerous such that joinder of all members is impossible or impracticable.

25 14. **Typicality.** Plaintiff’s claims are typical of all Class Members. Plaintiff, like all other

26 ¹ Employees are also required to leave the facility floor because food and drink (other than
27 water) are not allowed to be consumed at an employee’s work station, so employees must leave to the
28 break room or the premises, which requires them to utilize this clock out procedure. The break room
has also been restricted in terms of capacity due to Covid.

1 Class Members, was subjected to the policies and practices set forth above. Plaintiff's job duties were
2 typical of Class Members in all relevant respects.

3 15. **Adequacy.** There are no material conflicts between the claims of the representative
4 Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands
5 his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member.
6 Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in
7 redressing Defendant's illegal practices on behalf of all Class Members. Moreover, Plaintiff has re-
8 tained competent counsel experienced in both class action and employment litigation. Plaintiff's at-
9 torneys, the proposed class counsel, are versed in the rules governing class action discovery, certifica-
10 tion, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff have in-
11 curred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily
12 expended for the prosecution of this action for the substantial benefit of each Class Member.

13 16. **Existence and Predominance of Common Issues.** Common questions of law and fact
14 exist as to all Class Members and predominate over issues affecting individual Class Members, includ-
15 ing, but not limited to:

16 17. Whether Uni-Fab has a common policy and/or practice of rounding non-exempt em-
17 ployees' time records to the detriment of those employees;

18 18. Whether Uni-Fab unlawfully and/or willfully failed to compensate Plaintiff and Class
19 Members at a minimum wage for all hours worked as a result of its rounding policies;

20 19. Whether Uni-Fab unlawfully and/or willfully failed to compensate Plaintiff and Class
21 Members required overtime wages as a result of its rounding policies;

22 20. Whether Uni-Fab has a common policy and/or practice of depriving Plaintiff and Class
23 Members of compliant, off-duty meal and/or rest periods;

24 21. Whether Uni-Fab unlawfully and/or willfully deprived Plaintiff and Class Members of
25 compliant, off-duty meal and/or rest periods;

26 22. Whether Uni-Fab has a common policy and/or practice of failing to maintain accurate
27 payroll records in the State of California;

28 23. Whether Uni-Fab unlawfully and/or willfully failed to maintain accurate payroll

1 records in the State of California;

2 24. Whether Uni-Fab has a policy and/or practice of failing to provide accurate wage state-
3 ments reflecting hours worked and wages earned to Plaintiff and Class Members;

4 25. Whether Uni-Fab unlawfully and/or willfully failed to provide accurate wage state-
5 ments reflecting hours worked and wages earned to Plaintiff and Class Members;

6 26. Whether Uni-Fab has a policy and/or practice of failing to pay Plaintiff and Class Mem-
7 bers final wages owed upon termination;

8 27. Whether Uni-Fab unlawfully and/or willfully failed to promptly pay compensation due
9 to Plaintiff and Class Members upon termination of employment in violation of Labor Code §§ 201,
10 202, and 203;

11 28. Whether Plaintiff and Class Members sustained damages as a result of any of the afore-
12 mentioned violations, and, if so, the proper measure of those damages, including interest, penalties,
13 costs, attorneys' fees, and equitable relief;

14 29. Whether Uni-Fab violated the Unfair Competition Law, Cal. Bus. & Prof. Code
15 § 17200, *et seq.*, by violating the above provisions of law; and

16 30. Whether Uni-Fab violated the Unfair Competition Law, Cal. Bus. & Prof. Code
17 § 17200, *et seq.*, by treating Plaintiff and Class Members unfairly by depriving them of rest and/or meal
18 periods, failing to provide them with compensation in lieu of meal and/or rest periods, failing to pay
19 wages upon termination, failing to furnish accurate and timely itemized wage statements upon pay-
20 ment of wages, and failing to pay all compensation due upon discharge.

21 31. **Superiority.** A class action is superior to other available means for the fair and efficient
22 adjudication of this dispute. The damages suffered by individual Class Members, while substantial,
23 are small compared to the burden and expense of individual prosecution of the complex and expensive
24 litigation necessary to address Defendant's conduct. Even if Class Members themselves could afford
25 individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Mem-
26 bers sought redress. In addition, individualized litigation increases the delay and expense to all parties
27 and to the court system resulting from the complex legal and factual issues of this case. Individualized
28 litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class

1 action device presents far fewer management difficulties; it allows the hearing of claims which might
2 otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it pro-
3 vides the benefits of single adjudication, economies of scale, and comprehensive supervision by a sin-
4 gle court. Plaintiff contemplates providing individual notice to members of the class defined above as
5 identified through Defendant's records.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 ***Labor Code §§ 1182.12, 1194, 1197.1, 1198***

9 ***Failure to Pay Minimum Wages***

10 **(Plaintiff and Class Against Defendant)**

11 32. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
12 herein.

13 33. California law requires employers to compensate employees for all time that an em-
14 ployee is "suffered or permitted to work," which includes all time "when any employer 'directs, com-
15 mands or restrains' an employee." *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000),
16 as modified (May 10, 2000); *see also* Code Regs. tit. 8, § 11070 ("Hours worked" means the time
17 during which an employee is subject to the control of an employer and includes all the time the em-
18 ployee is suffered or permitted to work, whether or not required to do so.)).

19 34. Under applicable California law, rounding of time is only allowed when the policy is
20 "fair and neutral on its face and it is used in such a manner that it will not result, over a period of time,
21 in failure to compensate the employees properly for all the time they have actually worked." *See's*
22 *Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 907 (2012); *see also* 29 C.F.R. § 785.48
23 ("For enforcement purposes this practice of computing working time will be accepted, provided that
24 it is used in such a manner that it will not result, over a period of time, in failure to compensate the
25 employees properly for all the time they have actually worked.)).

26 35. Defendant employed a timeclock rounding policy that consistently and as a matter of
27 common policy and practice failed to pay Class Members at least minimum wages for all hours worked.

28 36. As a result of Defendant's failure and refusal to comply with California law, Plaintiff

1 and Class Members are entitled to recover actual and liquidated damages for the unpaid time, plus
2 injunctive relief and reasonable attorney's fees and costs. Lab. Code §§ 1194, 1197.1.

3 **SECOND CAUSE OF ACTION**

4 ***California Labor Code §§ 510 and 1198***

5 ***Unpaid Overtime***

6 **(Plaintiff and Class Against Defendant)**

7 37. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
8 herein.

9 38. California Labor Code §§ 510 and 1198 provide that it is unlawful to employ persons
10 without compensating them at a rate of pay either time-and-one-half or two-times that person's regu-
11 lar rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

12 39. Plaintiff and Class Members who work more than eight hours in a day or more than
13 forty hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours worked in
14 excess of eight hours in a day or more than forty hours in a workweek. An employee's regular rate of
15 pay includes all remuneration for employment paid to, or on behalf of, the employee, including com-
16 missions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container Corp. of California*,
17 4 Cal. 5th 542, 573 (2018), *as modified* (Apr. 25, 2018).

18 40. Throughout the Class Period, Plaintiff and other Class Members were not paid over-
19 time premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve
20 hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in
21 excess of forty hours in a week, because all hours worked were not recorded as a direct consequence
22 of Defendant's rounding policy.

23 41. Defendant knew or should have known that its rounding policy resulted in Plaintiff and
24 Class Members working unpaid overtime. Because Plaintiff and Class Members sometimes worked
25 shifts of more than eight hours a day or forty hours a week, some of the time lost pursuant to Defend-
26 ant's rounding policy should have been compensated at the appropriate overtime rate of pay. Accord-
27 ingly, Defendant's time clock rounding policy resulted in Plaintiff and Class Members being deprived
28 of earned overtime wages.

42. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

Labor Code §§ 226.7, 512, 558, and 1198

Failure to Provide Meal Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendant)

43. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

44. At all times relevant to this complaint, Defendant knew it was obligated to provide legally-compliant meal breaks to its non-exempt employees pursuant to Labor Code §§ 512 and 226.7. Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

45. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

46. Since at least four years prior to the filing of this action, Defendant consistently denied its non-exempt employees the opportunity to take compliant 30-minute meal periods in accordance with these mandates. Defendant's rounding policy applied to meal period clock-in and clock-outs and frequently resulted in automatic adjustments to time records for meal periods that were less than 30 minutes but characterized for payroll purposes as having lasted for 30-minutes. *See Donohue v. Amn Servs.*, 11 Cal.5th 58, 69 (Cal. 2021) ("By requiring premium pay for any violation, no matter how minor, the structure makes clear that employers must provide compliant meal periods whenever such a period is triggered. This corroborates the conclusion that rounding is improper []. A premium pay

1 scheme that discourages employers from infringing on meal periods by even a few minutes cannot be
2 reconciled with a policy that counts those minutes as negligible rounding errors.”).

3 47. Additionally, Defendant’s policies and practices regarding clocking out for meal peri-
4 ods served to deprive the Class of a full 30-minute break period free of employer control as set forth
5 more fully above.

6 48. Accordingly, Plaintiff and Class Members were uniformly denied meal periods as a re-
7 sult of Defendant’s formal policies and practices. By failing to consistently provide uninterrupted, off-
8 duty 30-minute meal periods, Defendant violated the Labor Code as to Plaintiff and Class Members.
9 Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defend-
10 ant an additional hour of pay at their regular rates of pay for each shift in which a required meal period
11 was not provided.

12 **FOURTH CAUSE OF ACTION**

13 ***Labor Code §§ 226.7, 512, 558, and 1198***

14 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

15 **(Plaintiff and Class Against Defendant)**

16 49. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth
17 herein.

18 50. At all times relevant to this complaint, Defendant knew it was obligated to provide
19 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

20 51. Labor Code § 226.7 provides:

21 (a) No employer shall require any employee to work during any meal or
22 rest period mandated by an applicable order of the Industrial Welfare Com-
mission.

23 (b) If any employer fails to provide an employee a meal period or rest pe-
24 riod in accordance with an applicable order of the Industrial Welfare Commis-
25 sion, the employer shall pay the employee one additional hour of pay at the
employee’s regular rate of compensation for each work day that the meal or
rest period is not provided.

26 52. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an em-
27 ployee to work during any rest or meal period mandated by an applicable order of the IWC. These
28

mandates have been interpreted to prohibit “on call” rest and meal periods. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods. “A rest period, in short, must be a period of rest.” *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

53. Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, “Rest Periods/Lactation Accommodations,” *available at* https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”).

54. By failing to consistently provide an uninterrupted, off-duty 10-minute rest periods for every four hours worked or major fraction thereof, Defendant violated the Labor Code.

55. Upon information and belief, Defendant also violated these mandates by requiring employees to remain on premises during rest periods for at least a portion of the Class Period.

56. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendant an additional hour of pay at their regular rates of pay for each shift that a required rest period was not provided.

FIFTH CAUSE OF ACTION

Labor Code §§ 226 and 1174

Failure to Provide Complete and Accurate Wage Statements

(Plaintiff and Class Against Defendant)

57. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

58. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four digits of his or her social security number; (7) the name and address of the legal entity that is the employer; *and* (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

59. At all times relevant to this complaint, Defendant's rounding policy ensured that Class Members' itemized wage statements did not reflect the true number of hours worked by the employee, and thus inaccurately reflected the amount of gross and net wages earned for both minimum and overtime wages. In addition, Defendant's failure to pay premium wages for missed meal and/or rest periods further ensured that Class Members' wage statements inaccurately reflected gross and net wages earned.

60. Defendant has also failed to keep accurate payroll records for Plaintiff and Class Members in accordance with Labor Code § 1174. Defendant's failure to keep and maintain accurate payroll records reflecting hours worked and wages earned has impeded Plaintiff and Class Members' ability to calculate unpaid wages earned.

61. Injury. Defendant knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed. These damages include, but are not limited to, costs incurred calculating the correct net wages for each pay period and the amount of employment taxes that were not paid to state and federal tax authorities.

62. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

SIXTH CAUSE OF ACTION

Labor Code §§ 201, 202, 203, and 204

Failure to Pay Wages When Due

(Plaintiff and Class Against Defendant)

63. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

64. Labor Code § 201 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages² shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of quitting.

65. Defendant does not include definite periods of service in their contracts of employment for Class Members employed at their California Plants. Plaintiff's contract of employment did not include a definite term.

66. Labor Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with § 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

67. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and 202, are due and payable twice during each calendar month, on days designated in advance by the employer as regular paydays.

68. Failure to Timely Pay Wages Due. As set forth above, Defendant failed to timely pay the minimum wages, overtime wages, and meal and rest period premiums resulting from its deficient timekeeping and meal and rest period policies.

69. Failure to Pay Upon Termination. Plaintiff and many Class Members have left Defendant's employ during the Class Period. As discussed above, Defendant knowingly failed to pay Plaintiff and Class Members all earned wages upon termination. Instead, Defendant willfully and intentionally refused to pay the earned rest and/or meal period premiums and earned minimum wages as alleged herein to Plaintiff and Class Members in violation of Labor Code §§ 201 and 202.

² Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment."

SEVENTH CAUSE OF ACTION

Labor Code §§ 558, 2698, et seq.

Private Attorneys General Act (“PAGA”) Penalties

(Plaintiff and Aggrieved Employees Against Defendant)

72. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set forth herein.

73. Entitlement to Penalties. Under the California Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of herself and other current or former employees as well as the general public, to recover penalties for an employer’s violations of the Labor Code and IWC Wage Orders. These penalties are in addition to any other relief available under the Labor Code and are allocated seventy-five percent to the Labor and Workforce Development Agency and twenty-five percent to the affected employees.

74. These penalties may be “stacked” separately for each of Defendants’ violations of the Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is appropriate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers’ compensation.”).

75. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, including civil penalties for Defendant’s violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1198, plus reasonable attorneys’ fees and costs.

76. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

77. Labor Code § 2699(a), which is part of PAGA, provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or themselves and other current or former employees pursuant to the procedures specified in § 2699(a).

78. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

79. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to be paid by Defendant and allocated as required by PAGA or other statute, in an amount to be shown at trial subject to the following formula: (a) in an amount set forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay period, and \$200 for each subsequent violation per employee per pay period.

80. Plaintiff is also entitled to recover for himself, other aggrieved employees, and the State of California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any

other penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each subsequent violation, plus 25% of the amount unlawfully withheld.

81. Labor Code § 558 provides:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

82. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Orders as alleged in this Complaint.

83. Procedural Requirements Met. Plaintiff filed a notice of claims with the LWDA and sent a copy to Defendant by certified mail. **Exhibit A.** As of the date of filing this complaint, Plaintiff has not received a response from the LWDA. As of 65 days from the date of that filing, should the LWDA not take action in response to Plaintiff's filing, Plaintiff will meet all procedural requirements necessary to bring this claim. Accordingly, Plaintiff is entitled to assert this claim. Labor Code § 2699.3(a)(2).

EIGHTH CAUSE OF ACTION

Bus. & Prof. Code §§ 17200, et seq.

Unfair Competition

(Plaintiff and Class Against Defendant)

84. Plaintiff repeats and incorporate by reference every allegation in this complaint as if

1 fully set forth herein.

2 85. Defendant Uni-Fab is a “person” as defined by California Business & Professions
3 Code § 17201, as it is a natural person, corporations, firms, partnerships, joint stock companies,
4 and/or associations.

5 86. Unlawful Business Practices. Defendant’s knowing violations of the Labor Code con-
6 stitutes an unlawful business practice as set forth in Business & Professions Code § 17200, *et seq.*

7 87. Defendant’s failure to abide by the laws discussed herein provide Defendant an unfair
8 advantage over their competitors at the expense of their workers. Instead, Defendant cuts corners in
9 the name of higher profits and at the expense of employee well-being. Defendant’s action thereby
10 constitute an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code
11 § 17200, *et seq.*

12 88. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
13 Defendant’s willful and ongoing misconduct, and to seek restitution of the amounts Defendant ac-
14 quired through the unfair, unlawful, and fraudulent business practices described herein. In addition,
15 Plaintiff seeks an award of costs and attorneys’ fees pursuant to California Code of Civil Procedure
16 § 1021.5.

17 **NINTH CAUSE OF ACTION**

18 ***Labor Code §§ 98.6; 923***

19 ***Unlawful Retaliation***

20 **(Plaintiff Against Defendant)**

21 89. Plaintiff repeats and incorporate by reference every allegation in this complaint as if
22 fully set forth herein.

23 90. On or about August 19, 2021, Plaintiff, through his attorneys, sent by certified mail a
24 request for employment records under Lab. Code §§ 226, 432, and 1198.5 to Defendant. According to
25 the tracking history, Defendant received the request on August 23, 2021. The request also informed
26 Defendant that Plaintiff had retained counsel to represent him in the terms and conditions of his em-
27 ployment.

28 91. Within days of Defendant’s receipt of the request, Defendant retaliated against

1 Defendant by, among other actions, changing his scheduled shifts to reduce or eliminate his ability to
2 earn overtime and by refusing to pay shift differential wages that had previously been promised to
3 Plaintiff.

4 92. Plaintiff was retaliated against for requesting his employment records and hiring an at-
5 torney to represent him with regards to his employment in violation of California law and public pol-
6 icy. *See* Lab. Code §§ 98.6; 923; *see also Montalvo v. Zamora*, 7 Cal. App. 3d 69, 75 (1970) (“We believe
7 it to be within the intent and scope of the statute . . . that the individual employee has the right to
8 designate an attorney or other individual to represent him in negotiating terms and conditions of his
9 employment, and that his discharge for so doing constitutes a violation of Labor Code, section 923.”).

10 93. As a direct and proximate result of the acts and conduct of Defendant, Plaintiff has suf-
11 fered and will continue to suffer general damages in amounts to be proven at trial. Defendant’s con-
12 duct was a substantial factor in causing those damages.

13 94. Plaintiff is informed and believes and based thereon alleges that the outrageous conduct
14 of Defendant described above was done with malice, fraud, and oppression and with conscious disre-
15 gard for his rights and with the intent, design, and purpose of injuring him. By reasons thereof, Plain-
16 tiff is entitled to punitive or exemplary damages from Defendant in a sum according to proof at trial.

17 **DEMAND FOR JURY TRIAL**

18 Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all
19 issues so triable.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully prays judgment as follows:

- 22 A. For an Order:
- 23 a. Certifying the Class;
- 24 b. Appointing Plaintiff as representative of the Class;
- 25 c. Appointing Plaintiff’s counsel as counsel for the Class;
- 26 B. For actual and liquidated damages according to proof at trial;
- 27 C. For statutory and civil penalties and special damages, according to proof at trial;
- 28 D. For pre- and post-judgment interest on monetary damages;

- 1 E. For preliminary and permanent injunctive relief;
- 2 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law;
- 3 and
- 4 G. For such other relief as this Court deems just and proper.

5

6 Dated: September 16, 2021

Respectfully submitted,

KING & SIEGEL LLP

8

9

10 By: 
Elliot J. Siegel
Julian Burns King
Attorneys for Plaintiff and the Putative Class

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit A



Julian Burns King
julian@kingsiegel.com

Elliot J. Siegel
elliot@kingsiegel.com

Robert J. King
robert@kingsiegel.com

Margaret Wright
margaret@kingsiegel.com

Erum Siddiqui
erum@kingsiegel.com

September 16, 2021

Via electronic filing to:

LABOR & WORKFORCE DEVELOPMENT AGENCY
1515 Clay Street, Ste. 801
Oakland, CA 94612

Via certified mail to:

UNI-FAB INDUSTRIES, INC.
c/o Paul R. Hitchcock (Agent for Service of Process)
5020 Brandin Ct.
Fremont, CA 94538

Re: *David Fernandez v. Uni-Fab Industries, Inc., et al.*

To Whom it May Concern:

We represent David Fernandez (“Plaintiff”) and a proposed class of current and former employees of defendant **Uni-Fab Industries, Inc.** and **Paul R. Hitchcock** (collectively, “Defendant”) in a lawsuit filed against Defendant in Alameda County Superior Court (the “Action”). A copy of the Complaint filed in the Action is enclosed as **Exhibit A**.

This letter serves as notice that we intend to prosecute representative claims for civil penalties under the Private Attorney’s General Act (“PAGA”) on behalf of those class members employed by Defendants within the year preceding the date of this notice through the date of trial in the Action (the “Aggrieved Employees”).

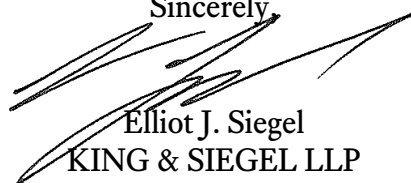
As set forth in the Complaint, Defendants violated their obligations under California law to, at least, (1) pay all minimum and overtime wages; (2)

failure to provide meal and rest periods; (3) provide and/or maintain required employment records in violation of Labor Code sections 226, 432, 1174, and 1198.5; and (4) timely pay wages during employment and/or all wages due at separation.

Together with this correspondence, the enclosed complaint serves as notice pursuant to Labor Code § 2699.3, *et seq.*, that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf the Aggrieved Employees. *See* Cal. Lab. Code §§ 2699, *et seq.*

Please feel free to contact us with any questions.

Sincerely

A handwritten signature in black ink, appearing to read 'Elliot J. Siegel', is written over the typed name and firm name.

Elliot J. Siegel
KING & SIEGEL LLP