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JOSE H. TOSCANO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF RIVERSIDE – SOUTHWEST JUSTICE CENTER**

JOSE H. TOSCANO, an individual,

Plaintiff,

v.

PRO STRUCTURAL, INC., a California
corporation; ROBERT YOWELL, an
individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. **CVSW2200293**

COMPLAINT FOR DAMAGES FOR:

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
- 2. FAILURE TO PROVIDE MEAL PERIODS (FAILURE TO PAY WAGES FOR MISSED MEAL PERIODS) (I.W.C. WAGE ORDER NO. 16-2001, CAL. LABOR CODE §§512, 226.7);**
- 3. FAILURE TO PROVIDE REST PERIODS (FAILURE TO PAY WAGES FOR MISSED REST PERIODS) (I.W.C. WAGE ORDER NO. 16-2001, CAL. LABOR CODE §§226.7);**
- 4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 5. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 6. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**
- 7. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ)**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, JOSE H. TOSCANO, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Riverside County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Riverside County, and because the work that is the subject of this action was performed by Plaintiff in Riverside County.

THE PARTIES

2. Plaintiff, JOSE H. TOSCANO, is and at all times relevant hereto was a resident of the County of Sam Bernardino, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant PRO STRUCTURAL, INC., was and is a California corporation doing business in the County of Riverside, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant ROBERT YOWELL (hereinafter referred to as "YOWELL") was and is an individual residing in the County of Riverside, State of California.

5. PRO STRUCTURAL, INC. is hereinafter referred to as "Employers" or "Defendants".

6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 16-2001 and are each an "employer or other person acting on behalf of an

1 employer” as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that
2 basis.

3 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
4 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
5 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
6 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
7 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
8 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
9 alleged hereinafter.

10 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
11 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
12 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
13 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
14 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
15 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

16 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
17 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
18 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
19 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
20 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
21 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
22 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
23 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
24 actually causing Plaintiff harm.

25 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
26 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
27 and/or failures to act by each Defendant acting individually, jointly and severally.

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1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
3 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
4 defendants have ceased to exist.

5 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
7 but not limited to because:

8 a. Employers are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

12 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
13 through one another's unlawful conduct, and by using one another as the funding source for their own
14 personal expenditures.

15 c. Employers and DOES 1-20, while really one and the same, were segregated to
16 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
17 accomplishing some other wrongful or inequitable purpose.

18 d. Employers do not comply with all requisite corporate formalities to maintain a
19 legal and separate corporate existence.

20 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
23 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
24 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
25 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
26 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
27 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
28 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

14. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employer sand/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

FACTUAL ALLEGATIONS

17. On or about May 22, 2017, Plaintiff began working for Employers as an Assistant Masonry. Plaintiff was a non-exempt, full-time employee, of Employers.

18. Between November 24, 2017 until March 4, 2021, Plaintiff's hourly wage rate was \$30.00. During this time period, Plaintiff's fixed schedule was five days per week for approximately 8 to 9 hours per day.

19. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff worked.

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1 20. Throughout Plaintiff's employment, Plaintiff was also not permitted to, and not advised
2 of Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial
3 portion thereof.

4 21. Throughout Plaintiff's employment, for each pay period, Plaintiff received inaccurate
5 paystubs that did not comply with Labor Code §226, because the paystubs failed to show the number of
6 hours worked by Plaintiff, failed to show the applicable pay period, failed to show pay for missed meal
7 and rest periods, as well as failed to show the true amount of wages earned and owed to Plaintiff.

8 22. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
9 commissions, benefits and loss or diminution of earning capacity, attorneys' fees, and costs of suit, plus
10 interest.

11
12 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

13 23. At all relevant times, PAGA was applicable to Plaintiff and his employment with
14 Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and Workforce
15 Development Agency ("LWDA").

16 24. Plaintiff and other employees of Defendants are "aggrieved employees" as defined by
17 PAGA, because they are all current or former employees of Defendants, and one or more of the alleged
18 violations were committed against them.

19 25. On or about September 14, 2021, Plaintiff gave written notice of Defendants' violations
20 of various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA
21 by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

22 26. The LWDA did not provide notice of its intention to investigate Defendants' violations
23 within 65 calendar days of the September 14, 2021 notice.

24 27. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover
25 civil penalties against Defendants, in addition to the other remedies, for violations of California Labor
26 Code §§ 201-203, 226 *et seq.*, 512, 558, 1194.

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FIRST CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 1182.12, 1194, 1194.2
AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE

28. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

29. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11050, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Plaintiff for worked hours, meal break premium hours, and rest break premium hours.

30. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 16-2001.

31. Plaintiff has been deprived of his rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Thus, he is entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

SECOND CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL BREAKS
I.W.C. WAGE ORDER NO. 16-2001, LABOR CODE §§512, 226.7
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

32. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

33. Labor Code §§512, 226.7 require employers to provide every employee with an uninterrupted meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

34. In the four years last past, Plaintiff regularly worked in excess of five hours per day and was thereby entitled to take uninterrupted 30-minute meal periods.

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1 35. Defendants failed and refused to provide Plaintiff with meal periods, and failed to
2 compensate Plaintiff for missed meal periods, as required by Labor Code §512 and the applicable sections
3 of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 16-2001, as follows:

4 36. From approximately November 24, 2017 until March 4, 2021, Plaintiff's statutory 30-
5 minute meal periods were interrupted, cut short, or taken at or after the 5th hour, approximately 5 times
6 per week for 170 weeks, or on approximately 850 separate days.

7 37. As alleged herein, Plaintiff is not exempt from the meal break requirements of 8 Code of
8 Regulations §11050 and Industrial Welfare Commission Order No. 16-2001. Consequently, Plaintiff is
9 owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever
10 is greater, for each day that Plaintiff was denied such meal periods, calculates as follows:

11 38. From approximately November 24, 2017 until March 4, 2021, Defendants failed to
12 provide Plaintiff with an uninterrupted statutory meal period, interrupted, cut short, or required Plaintiff
13 to take the statutory meal period at or after the 5th hour, for those days on which Plaintiff worked at least
14 five hours on approximately 850 separate days. Consequently, Plaintiff is owed one hour of pay at \$30.00
15 for each day, or \$25,500.00, plus interest thereon, for unpaid interrupted statutory meal periods.

16 39. Plaintiff has been deprived of his rightfully earned compensation for meal breaks as a
17 direct and proximate result of Defendants' failure and refusal to pay said compensation.

18 40. Thus, for the entirety of the time period set forth above, Plaintiff is entitled to recover
19 \$25,500.00, pursuant to Labor Code §512, plus interest thereon and costs of suit.

20
21 **THIRD CAUSE OF ACTION**

22 **FOR FAILURE TO PROVIDE REST BREAKS**

23 **I.W.C. WAGE ORDER NO. 16-2001, LABOR CODE § 226.7**

24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 41. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
26 though set forth in full herein.

27 42. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
28 rest period of not less than 10 minutes, for every period of work exceeding five hours.

1 43. In the four years last past, Plaintiff regularly worked in excess of 4 hours per day and was
2 thereby entitled to take timely and uninterrupted 10-minute rest periods on each day he worked.
3 Nevertheless, Plaintiff was not permitted to, and not advised of his right to take the statutory rest periods
4 to which he was entitled.

5 44. Defendants failed and refused to provide Plaintiff with rest periods, and failed to
6 compensate Plaintiff for missed rest periods, as required by Labor Code §226.7(b) and the applicable
7 sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 16-2001, as
8 follows:

9 45. From approximately November 24, 2017 until March 4, 2021, Plaintiff was not permitted
10 and not advised of his right to take one or more of his statutory 10-minute rest periods for days on which
11 Plaintiff worked for at least four hours, which was each day Plaintiff worked, or approximately 850
12 separate days (5 days per week for 170 weeks).

13 46. As alleged herein, Plaintiff is not exempt from the rest break requirements of 8 Code of
14 Regulations §11050 and Industrial Welfare Commission Order No. 16-2001. Consequently, Plaintiff is
15 owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage, whichever
16 is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

17 47. From approximately November 24, 2017 until March 4, 2021, Defendants failed to
18 provide Plaintiff with the statutory rest period for those days on which he worked at least four hours on
19 approximately 850 separate days. Consequently, Plaintiff is owed one hour of pay at \$30.00 for each day,
20 or \$25,500.00, plus interest thereon, for unpaid rest periods.

21 48. Plaintiff has been deprived of his rightfully earned compensation for rest breaks as a direct
22 and proximate result of Defendants' failure and refusal to pay said compensation.

23 49. Thus, for the entirety of the time period set forth above, Plaintiff is entitled to recover an
24 amount of \$25,500.00, pursuant to Labor Code § 226.7(b), plus interest thereon and costs of suit.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
(CAL. LABOR CODE §§226, ET SEQ.)
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

50. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though set forth in full herein.

51. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

52. In addition, thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

53. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none of the required information, including hours actually worked.

54. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

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1 55. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
7 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
8 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

9 56. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
10 approximately 52 times during the last year that Plaintiff has worked for Defendants. Consequently,
11 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
12 amount of \$4,000.00, whichever is greater.

13 57. In addition, thereto, for Defendants' 52 violations, Defendants are penalized \$250.00 for
14 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
15 in Labor Code §226.3 penalties of \$51,250.00 (\$250.00 + \$1,000.00 x 51 subsequent pay periods).

16 58. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
17 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
18 applicable provisions, as well as attorneys' fees and costs.

19
20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUITTING EMPLOYEES**

22 **(WAITING TIME PENALTIES)**

23 **CAL. LABOR CODE §§ 201,202, 203**

24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 59. Plaintiff incorporates by reference and re-alleges the paragraphs set forth above as though
26 set forth fully herein.

27 60. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required to pay all
28 earned and unpaid wages to discharged and quitting employees.

1 61. California Labor Code § 201 mandates that if an employer discharges an employee, the
2 employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

3 62. Pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages
4 due to an employee no later than 72 hours after the employee quits his or her employment, unless the
5 employee provided 72 hours previous notice of his or her intention to quit, in which case the employee
6 is entitled to his or her wages at the time of quitting.

7 63. California Labor Code § 203 provides that if an employer willfully fails to pay, in
8 accordance with California Labor Code §§ 201 and 202, any wages of an employee who discharged or
9 who quits, the employer is liable for waiting time penalties in the form of continued compensation to the
10 employee at the same rate for up to 30 workdays.

11 64. Defendants have willfully failed, and continue to willfully fail, to pay accrued wages and
12 other compensation to Plaintiff in accordance with California Labor Code §§ 201 and 202.

13 65. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §§201-
14 203.

15 66. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
16 is entitled to payment as previously pleaded herein, and more than \$7,200.00 in wait time penalties,
17 calculated based on 30 days of regular weekly wages as follows: \$30.00 hourly rate x 8 hours per day x
18 30 days).

19 67. Based on Defendants' conduct as alleged herein, Defendants are liable for penalties
20 pursuant to Labor Code §203, 558 and other applicable provisions, as well as attorneys' fees and costs.

21
22 **SIXTH CAUSE OF ACTION**
23 **FOR UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.)**
24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 68. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
26 set forth in full herein.

27 69. Defendants' violations of the applicable 8 Code of Regulations section, Industrial Welfare
28 Commission Order No.16-2001,the above-stated Labor Code sections, 2699, and other applicable

1 provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime
2 wages, Defendants' failure to provide meal and rest breaks, and Defendants' failure to provide timely and
3 accurate wage and hour statements, constitute unfair business practices in violation of Business &
4 Professions Code §§17200, et seq.

5 70. As a result of Defendants' unfair business practices, Defendants have reaped unfair
6 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
7 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

8 71. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
9 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
10 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from
11 Plaintiff.

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13 **SEVENTH CAUSE OF ACTION**
14 **FOR PRIVATE ATTORNEY GENERAL ACT**
15 **(CAL. LABOR CODE §2699, ET SEQ)**
16 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

17 72. Plaintiff re-alleges and incorporates by reference the above-stated Paragraphs as though
18 set forth in full herein.

19 73. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may, and does, bring an
20 action against Defendants, on behalf of himself and other current or former employees, seeking statutory
21 civil penalties for Defendants' violations of the California Labor Code.

22 74. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
23 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
24 previously pleaded in this Complaint.

25 75. On or about September 14, 2021, more than 65 calendar days before filing this Complaint,
26 Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by
27 certified mail to Defendants of the specific provisions of the California Labor Code that Defendants
28 violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included the

1 above-stated Labor Code sections, each of which is enumerated among the serious violations set forth in
2 Labor Code §2699.5.

3 76. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
4 and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
5 Plaintiff may, and does, now commence a civil action, pursuant to Labor Code §2699.3.

6 77. As a direct and proximate result of Defendants' California Labor Code violations as set
7 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved employee per
8 pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each
9 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
10 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
11 provide for a penalty, §§226.3, 226.7, 512, and 558.

12 78. These penalties recoverable for Plaintiff alone totals approximately \$10,000.00.

13 79. Plaintiff may also, and does, seek these same penalties on behalf of all other aggrieved
14 employees.

15 80. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
16 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

17
18 **PRAYER FOR RELIEF**

19 1. For a monetary judgment representing compensatory damages including lost wages,
20 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
21 together with interest on these amounts; for other special damages; and for general damages for mental
22 pain and anguish and emotional distress and loss of earning capacity to be ascertained at trial;

23 2. For restitution of all monies due to Plaintiff, as well as disgorged profits from
24 Defendants' unfair and unlawful business practices;

25 3. For payment of unpaid wages pursuant to 8 Code of Regulations §11050.

26 4. For payment of meal period compensation pursuant to Labor Code §226.7, 512, in the
27 amount of no less than \$25,500.00;

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1 5. For payment of rest period compensation in the amount of no less than \$25,500.00
2 pursuant to Labor Code §§226.7, 512;

3 6. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

4 7. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
5 less than \$51,250.00;

6 8. For waiting time penalties pursuant in the amount of no less than \$7,200.00 to Labor Code
7 §§ 201-203;

8 9. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
9 \$10,000.00 on Plaintiff's own behalf, and similar amounts on behalf of each and all of Defendants'
10 aggrieved employees;

11 10. For prejudgment interest on each of the foregoing at the legal rate from the date the
12 obligation became due through the date of judgment in this matter.

13 11. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
14 Code and/or any other basis;

15 12. For post-judgment interest; and

16 13. For any other relief that is just and proper.

17
18 DATED: January 14, 2022

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20 By: _____


Jace H. Kim, Esq.
Carlos Andres Perez, Esq.
Javier Ramirez, Esq.
Attorneys for Plaintiff,
JULIO ARELLANO

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DATED: January 14, 2022



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COMPLAINT FOR DAMAGES