

FILED  
Superior Court Of California,  
Sacramento  
02/25/2022  
mvallador  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2022-00316052

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Attorneys for Plaintiff BRYAN CULP, putative class  
and aggrieved employees,

**IN THE SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SACRAMENTO, GORDON D. SCHABER COURTHOUSE**

BRYAN CULP, an individual, on behalf of all  
those similarly situated and aggrieved employees,

Plaintiffs,

vs.

FPI MANAGEMENT, INC., a California  
corporation, DENNIS TREADAWAY, an  
individual, and DOES 1-20 inclusive,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Indemnify for Necessary Expenditures in Violation of Labor Code § 2802;
2. Failure to Pay Overtime in Violation of Labor Code §§ 510 and 1198;
3. Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in violation of § 226, 1174 (d), and 1198;
4. Failure to Provide Meal Periods in Violation of §§ 226.7, 512 (a), and 1198;
5. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 1198;
6. Failure to Timely Pay Wages in Violation of Labor Code § 204;
7. Civil Penalties in Violation of Labor Code §§ 2698, et seq.;

**Jury Trial Demanded**

BY FAX

1           1.       Plaintiff BRYAN CULP, on behalf of himself and all others similarly situated, and as  
2 an aggrieved employee on behalf of all other aggrieved employees, is informed and believes and  
3 thereon alleges as follows:

4                                   **PARTIES, VENUE AND JURISDICTION**

5           2.       This Class Action is brought pursuant to Code of Civil Procedure § 382 to recover  
6 wages and all other available relief on behalf of Plaintiff and all similarly situated current and former  
7 non-exempt, hourly- paid employees of Defendants.

8           3.       This enforcement action is brought pursuant to the Private Attorneys General Act of  
9 2004, California Labor Code §§ 2698, et seq. (“PAGA”) to recover civil penalties and any other  
10 available relief on behalf of Plaintiff, the State of California, and other current and former aggrieved  
11 employees of Defendants and against whom one or more Labor Code violations or any provision  
12 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage  
13 Order were committed, as set forth in this Complaint.

14          4.       Plaintiff BRYAN CULP was at all times relevant hereto a resident of Stockton,  
15 California

16          5.       At all times relevant herein, Defendant FPI MANAGEMENT, INC. was a corporation  
17 with its principal place of business in Folsom, California.

18          6.       Defendant DENNIS TREADAWAY was at all times relevant herein the principal of  
19 FPI MANAGEMENT, INC.

20          7.       Venue is proper pursuant to California Civil Procedure Code §§ 395 (a) and 395.5  
21 because this suit was filed in the county where the liability arises and where the breach occurred.

22          8.       Plaintiff BRYAN CULP works as a Building Maintenance Mechanic for FPI  
23 MANAGEMENT, INC., DENNIS TREADAWAY, and DOES 1-20, a California Corporation,  
24 located at 800 Iron Point Road, Folsom, CA 95630. His date of hire was December 6, 2019.

25          9.       Plaintiff’s job duties include maintaining and servicing apartment buildings and  
26 appliances. He was assigned to work at the Polo Run Apartments from December 6, 2020 to November  
27 2020.

28          10.       Starting in December 2020, Plaintiff was assigned to work at the River Rock/Pacific

1 Commons Apartments location, where he performed work as a Groundskeeper.

2 11. In May 2021, Plaintiff was promoted to Supervisor Maintenance Technician, although  
3 his job duties and rate of pay remained the same.

4 12. At all relevant times herein, Plaintiff worked Monday through Friday, from 8:00 a.m.  
5 to 5:00 p.m. and was paid \$20 per hour.

6 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a  
7 unity of interest and ownership between FPI MANAGEMENT, INC., DENNIS TREADAWAY and  
8 DOES 1-20 that the individuality and separateness of defendants have ceased to exist.

9 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation  
10 of purported corporate existence, FPI MANAGEMENT, INC., DENNIS TREADAWAY and DOES  
11 1-20 are, in reality, one and the same.

12 15. FPI MANAGEMENT, INC., DENNIS TREADAWAY and DOES 1-20 do not comply  
13 with all requisite corporate formalities to maintain a legal and separate existence.

14 16. The business affairs of FPI MANAGEMENT, INC., DENNIS TREADAWAY and  
15 DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the same cannot  
16 reasonably be segregated, and the same are in inextricable confusion. FPI MANAGEMENT, INC. is,  
17 and at all times relevant hereto was, used by DOES 1-20 and DENNIS TREADAWAY as a mere shell  
18 and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of DOES  
19 1-20. The recognition of the separate existence of FPI MANAGEMENT, INC. would not promote  
20 justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff for  
21 violations of state law. The corporate existence of FPI MANAGEMENT, INC. and DOES 1-20 should  
22 be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud  
23 and injustice to Plaintiff herein.

24 17. Accordingly, FPI MANAGEMENT, INC., DENNIS TREADAWAY and DOES 1-20  
25 are the alter egos of one another, and the fiction of their separate corporate existence must be  
26 disregarded.

27 18. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
28 thereon alleges that FPI MANAGEMENT, INC., DENNIS TREADAWAY and DOES 1-20 are joint

1 employers by virtue of a joint enterprise, and that the employees and agents of FPI MANAGEMENT,  
2 INC. were also employees of DENNIS TREADAWAY and DOES 1-20. FPI MANAGEMENT, INC.  
3 employees performed services for each and every one of Defendants, and to the mutual benefit of all  
4 Defendants, and all Defendants shared control of them as employees, either directly or indirectly, and  
5 the manner in which Defendants' business was and is conducted.

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

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

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

27 22. Whenever and wherever reference is made in this Complaint to any act or failure to act  
28 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the

1 acts and/or failures to act by each Defendant acting individually, jointly and severally.

2 **GENERAL ALLEGATIONS**

3 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members  
4 were not paid for all on-call hours worked.

5 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
6 have known that Plaintiff and class members were entitled to receive certain wages for overtime  
7 compensation and that they were in fact not receiving certain wages for overtime compensation.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
9 have known that Plaintiff and class members were entitled to meal periods in accordance with the  
10 Labor Code or payment of one additional hour of pay at their regular rates of pay when they were  
11 not provided with timely, uninterrupted, 30 minute meal periods and that Plaintiff and class members  
12 were not provided with all meal periods or payment of one additional hour of pay at their regular rates  
13 of pay when they did not receive a timely, uninterrupted, 30 minute meal period.

14 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
15 have known that Plaintiff and class members were entitled to 10 minute rest periods in accordance  
16 with the Labor Code and applicable IWC Wage Order or payment of one additional hour of pay at  
17 their regular rates of pay when they were not provided with a compliant 10 minute rest period and  
18 that Plaintiff and class members were not provided compliant 10 minute rest periods or payment of  
19 one additional hour of pay at their regular rates of pay when they were not provided a compliant 10  
20 minute rest period.

21 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
22 have known that Plaintiff and class members were entitled to timely payment of wages during their  
23 employment. Plaintiff and class members did not receive payment of all wages, including overtime  
24 wages, minimum wages, and meal and rest period premiums in violation of the California Labor Code.

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should  
26 have known that Plaintiff and class members were entitled to receive full reimbursement for all  
27 business-related expenses and costs they incurred in direct consequence of the discharge of their  
28 duties and that they did not receive full reimbursement of applicable business-related expenses and

1 costs incurred.

2       29. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
3 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and  
4 class members for all hours worked, and that Defendants had the financial ability to pay such  
5 compensation, but willfully, knowingly, and intentionally failed to do so.

6       30. Plaintiff's proposed Class consists of: All persons who worked for Defendants as non-  
7 exempt, hourly employees in California, within four years prior to the filing of the initial complaint  
8 until the date of trial ("Class").

9       31. Plaintiff's proposed subclass consists of: All persons who worked for Defendants as  
10 non-exempt, hourly paid employees in California and who received at least one wage statement within  
11 a one year period prior to the filing of the initial complaint until the date of trial ("Subclass").

12       32. Members of the Class and Subclass are referred to herein as "Class."

13       33. Plaintiff reserves the right to redefine the Class and to add additional subclasses as  
14 appropriate based on further investigation and discovery.

15       34. At all relevant times, Defendants have had a common and consistent policy and  
16 practice of failing to pay the proper overtime, reimburse for necessary business expenditures, furnish  
17 compliant wage statements, maintain accurate pay records, provide uninterrupted meal and rest  
18 periods and timely pay wages in violation of the Labor Code and IWC Wage Orders.

19       35. There is a well-defined community of interest in the litigation and the class members  
20 are readily ascertainable:

21       36. **Numerosity:** The members of the Class are sufficiently numerous that joinder of all  
22 members is impracticable. The membership of the entire Class is unknown to Plaintiff at this time.  
23 However, the Class is estimated to be greater than 50 individuals and the identity of such membership  
24 is readily ascertainable by inspection of Defendants' employment records.

25       37. **Commonality:** There are questions of law and fact common to the Class that are  
26 answerable on a common basis, and these questions predominate over individual questions. The  
27 questions of law and fact common to the Class include, without limitation:

28       a. Whether Defendants required Plaintiff and class members to work over 8 hours per

1 day, over 12 hours per day, or over 40 hours per week and failed to pay them all  
2 legally required overtime compensation;

3 b. Whether Defendants failed to provide Plaintiff and class members with meal  
4 periods;

5 c. Whether Defendants failed to provide Plaintiff and class members with rest  
6 periods;

7 d. Whether Defendants provided Plaintiff and class members with complete and  
8 accurate wage statements as required by California Labor Code section 226 (a);

9 e. Whether Defendants failed to timely pay overtime wages and meal and rest period  
10 premiums to Plaintiff and class members during their employment;

11 f. Whether Defendants failed to reimburse Plaintiff and class members for necessary  
12 business expenditures, losses incurred by them in direct consequence of the  
13 discharge of their duties or obedience to the directions of the employer;

14 g. The appropriate amount of damages, restitution, or monetary penalties resulting  
15 from Defendants' violations of California law.

16 38. **Typicality:** Plaintiff's claims are typical of the claims of the Class he seeks to represent.  
17 As set forth herein, Defendants' common course of conduct causes Plaintiff and similarly situated  
18 persons employed by Defendants the same or similar injuries and damages. Plaintiff's claims are  
19 thereby representative of and co-extensive with the claims of the Class.

20 39. **Adequacy:** Plaintiff will fairly and adequately represent the interests of all members  
21 of the Class he seeks to represent. Plaintiff is a member of the Class he seeks to represent, does not  
22 have any conflicts of interest with the Class, will prosecute the case vigorously on behalf of the Class,  
23 and has already devoted time and resources to the initial investigation of these claims. Plaintiff's  
24 attorney is competent and experienced in litigating employment actions, including wage and hour  
25 class actions.

26 40. **Superiority of Class Action:** A class action is superior to other available methods for  
27 the fair and efficient adjudication of this controversy. In particular, Plaintiff is informed and believes  
28 that some Class Members may be unwilling to bring individual lawsuits for fear of retaliation by

1 Defendants. Because the damages suffered by certain individual members of the Class may be  
2 relatively small, the expense and burden of individual litigation make it impracticable for Class  
3 Members to pursue their claims separately. Each member of the Class has been damaged and is entitled  
4 to recovery by reason of Defendants' illegal, fraudulent and unfair employment practices and policies.  
5 Class action treatment will allow those similarly situated persons to litigate their claims in the manner  
6 that is most efficient and economical for the parties and the judicial system. Class action treatment  
7 will also avoid inconsistent outcomes because the same issues can be adjudicated in the same manner  
8 for all members of the Class.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**

11 **IN VIOLATION OF LABOR CODE § 2802**

12 **(AGAINST ALL DEFENDANTS)**

13 41. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
14 though fully set forth herein.

15 42. An employer shall indemnify his or her employee for all necessary expenditures or  
16 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his  
17 or her obedience to the directions of the employer.

18 43. At all times during their employment, Mr. Culp and class members were required by  
19 Defendants to furnish their own tools and in fact used those tools to perform their job duties. Indeed,  
20 there were an insufficient quantity of tools to allow Mr. Culp or class members to perform their job  
21 duties without having to supply their own tools. Despite that, Mr. Culp and class members were  
22 required to supply their own hand tools, they never reimbursed for the cost of these tools in violation  
23 of Labor Code § 2802.

24 44. Mr. Culp also contends that Defendants failed to pay him or the class members double  
25 minimum wage required by IWC Wage Order No. 4-2001, section 9 (b).

26 45. Plaintiff is informed and believes and thereon alleges that, at all relevant times,  
27 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to  
28 indemnify the Class for the reasonable expenses they incurred in the course of performing their duties.

1 Specifically, Plaintiff is informed and believes and thereon alleges that at all relevant times,  
2 Defendants have not reimbursed Class Members for the purchase of their tools.

3 46. As a result of the foregoing, all members of the Class are entitled to recover all sums  
4 incurred by them for the purchase of the tools that were necessary for the performance of their jobs  
5 and which they were required to purchase in an amount according to proof at trial.

6 47. As a result of the foregoing, class members are further entitled to an award of interest  
7 at the same rate as judgments in civil actions, accruing from the date on which they incurred the  
8 necessary expenditures or losses and all reasonable costs, including attorney's fees incurred by them  
9 for enforcing the rights granted by Labor Code § 2802.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME WAGE**

12 **IN VIOLATION OF LABOR CODE §§ 510 and 1198**

13 **(AGAINST ALL DEFENDANTS)**

14 48. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
15 though fully set forth herein.

16 49. Labor Code § 1198 makes it unlawful to employ an employee under conditions of labor  
17 that are prohibited by the applicable wage order. California Labor Code § 1198 requires that "the  
18 standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for  
19 employees. The employment of any employee . . . under conditions of labor prohibited by the order  
20 is unlawful."

21 50. The applicable IWC Wage Order required Defendants to pay Plaintiff and class  
22 members working more than 8 hours in a day or more than 40 hours in a workweek, at the rate of time  
23 and one-half for all hours worked in excess of 8 hours in a day or 40 hours in a workweek. The  
24 applicable IWC Wage Order further required Defendants to pay Plaintiff and class members working  
25 more than 12 hours in a day, overtime compensation at a rate of 2 times their regular rate of pay, and  
26 2 times their regular rate of pay for hours worked in excess of 8 hours on the seventh consecutive  
27 day of a work in a workweek.

28 51. At all relevant times, Defendants willfully failed to pay all overtime wages owed to

1 Plaintiff and class members. At all relevant times, Plaintiff and class members were not paid overtime  
2 premiums for all of the hours they worked in excess of 8 hours in a day, in excess of 12 hours in a  
3 day, and/or in excess of 40 hours in a week, and for all hours worked in excess of 8 hours on the  
4 seventh consecutive day of work in a workweek.

5 52. Plaintiff and class members are owed overtime and double time compensation for the  
6 on-call hours worked during their employment. Further, Plaintiff and class members were not paid for  
7 all hours worked, including time that they spent “on call” even after their shifts had ended. Because  
8 Plaintiff and class members worked shifts in excess of 8 hours a day or more and 40 hours a week or  
9 more, much of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and  
10 class members were not paid overtime wages for all of the overtime hours they actually worked.

11 53. At all relevant times herein, Defendants had, and continue to have, a company-wide  
12 policy of failing to implement any policies to authorize and permit employees to take compliant meal  
13 periods and, instead, engaged in a practice of discouraging and impeding employees from taking meal  
14 periods by assigning them a heavy workload, understaffing their facilities, and interrupting employees  
15 during their meal periods.

16 54. Additionally, Defendants, on a company-wide basis, failed to schedule meal periods  
17 even though they are aware that employees are entitled to such meal periods. As a result of this  
18 company-wide understaffing of its facilities, interrupting employees with business phone calls and  
19 texts during their meal periods, and failure to schedule meal periods, Plaintiff and class members were  
20 not always permitted and authorized to take uninterrupted 30-minute meal periods during shifts to  
21 which they were entitled to receive a meal period.

22 55. At all relevant times, Defendants had no policy for scheduling second meal periods and  
23 no practice of permitting Plaintiff and class members to take second 30-minute meal periods. As a  
24 result, on days that Plaintiff and class members worked in excess of 10 hours, they were not provided  
25 with second 30-minute meal periods.

26 56. Defendants knew or should have known that, as a result of their policies and practices,  
27 Plaintiff and class members were performing some of their assigned duties off-the-clock and/or  
28 during unpaid meal periods, and were suffered or permitted to perform work for which they were not

1 paid. Because Plaintiff and class members worked shifts in excess of 8 hours a day or more and 40  
2 hours a week or more, much of this off-the-clock work qualified for overtime premium pay.  
3 Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime hours  
4 they actually worked. To the extent Plaintiff and class members worked shifts in excess of 12 hours  
5 a day, or in excess of 8 hours on the seventh consecutive day of a work in a workweek, Plaintiff and  
6 class members were not paid double time wages for all overtime hours they actually worked.

7 57. Defendants' failure to pay Plaintiff and class members the balance of overtime  
8 compensation, as required by California law, violates the provisions of California Labor Code §§ 510  
9 and 1198. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled to  
10 recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

11 58. Labor Code §558 (a) requires that any person acting on behalf of an employer who  
12 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each  
13 underpaid employee for each pay period in which the employee was underpaid in addition to an  
14 amount sufficient to recover underpaid wages. Also, Labor Code §558 (a) for each subsequent  
15 violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid  
16 employee for each pay period for which the employee was underpaid in addition to an amount  
17 sufficient to recover the underpaid wages.

18 59. In addition to the above withheld overtime wages, Plaintiff and the Class are entitled  
19 to civil penalties based upon Defendants' underpayment of overtime wages. Defendants violated  
20 Labor Code §558 on each of the past pay periods within the one-year preceding the filing of this  
21 complaint, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants  
22 are penalized \$100.00 each, for a total of Labor Code §558 penalties in an amount to be proven at trial.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**  
25 **AND FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**  
26 **IN VIOLATION OF LABOR CODE §§ 226 1174 (d), and 1198**  
27 **(AGAINST ALL DEFENDANTS)**

28 60. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as

1 though fully set forth herein.

2       61. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-  
3 exempt employees with accurate itemized statements showing total hours worked, hourly wages, gross  
4 wages, total deductions net wages earned and name of the employer. An employer who violates these  
5 Code sections is liable to its employees for the greater of actual damages suffered by the employee, or  
6 \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per  
7 employee for each subsequent pay period, up to a statutory maximum of \$4,000.00.

8       62. Pursuant to Labor Code § 558.1, any employer or other person acting on behalf of an  
9 employer, who violates, or causes to be violated, Labor Code section 226, may be held liable as the  
10 employer for such violation. The term ‘other person acting on behalf of an employer’ is limited to a  
11 natural person who is an owner, director, officer, or managing agent of the employer.

12       63. At all relevant times, Defendants willfully provided Plaintiff and subclass members  
13 with incorrect wage statements accurately reflecting the time spent on-call. The additional time that  
14 Plaintiff and subclass members are owed is not accurately reflected in their wage statements.

15       64. Additionally, because Defendants failed to document time worked on Plaintiff’s and  
16 subclass members’ wage statements and employment records for time spent working during meal  
17 periods, Defendants unlawfully deducted wages earned and meal period premiums that should have  
18 been paid. Thus, Defendants did not furnish wage statements to Plaintiff and subclass members  
19 containing the correct amount of gross wages earned in violation of Labor Code § 226 (a) (1),  
20 accurate total hours worked in violation of Labor Code § 226 (a) (2), correct amount of net wages  
21 earned in violation of Labor Code § 226 (a) (5), or accurate number of hours worked at each  
22 corresponding hourly rate in violation of Labor Code § 226 (a) (9).

23       65. Further, Plaintiff and subclass members are only allowed to access wage statements  
24 while on FPI MANAGEMENT, INC premises.

25       66. To the extent that Defendants paid any meal break premium and/or rest break premium  
26 payments, Defendants failed to identify such payments on Plaintiff’s and subclass members’ wage  
27 statements and employment records, and Defendants otherwise failed to provide information on the  
28 wage statements sufficient to identify how many premium payments were paid during each pay

1 period, the specific dates worked giving rise to the premium payments owed, or to determine whether  
2 such premium payments adequately and/or accurately compensated Plaintiff and subclass members  
3 for any and all premiums owed.

4 67. California Labor Code § 1198 provides that the maximum hours of work and the  
5 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the  
6 applicable IWC Wage Orders. § 1198 further provides that “the employment of any employees for  
7 longer hours than those fixed by the order or under conditions of labor prohibited by the order is  
8 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time  
9 records showing when the employee begins and ends each work period and meal period. At all  
10 relevant times, Defendants failed, on a company-wide basis, to keep records of meal period start and  
11 stop times for Plaintiff and Subclass members in violation of section 1198.

12 68. California Labor Code section 1174 (d) provides that “every person employing labor  
13 in this state shall ... keep a record showing the names and addresses of all employees employed and  
14 the ages of all minors” and “keep, at a central location in the state or at the plants or establishments  
15 at which employees are employed, payroll records showing the hours worked daily by and the wages  
16 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees  
17 employed at the respective plants or establishments...” At all relevant times, and in violation of Labor  
18 Code § 1174 (d), Defendants willfully failed to maintain accurate and/or any payroll records for  
19 Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as  
20 a result of failing to record the off-the-clock hours that they worked.

21 69. Plaintiff and subclass members are entitled to recover the greater of their actual  
22 damages caused by Defendants’ failure to comply with Labor Code § 226 (a), or an aggregate penalty  
23 not exceeding four thousand dollars \$4,000 per employee, plus attorneys’ fees and costs.

24 **FOURTH CAUSE OF ACTION**  
25 **FAILURE TO PROVIDE MEAL PERIODS**  
26 **LABOR CODE §§ 226.7, 512 (a) and 1198**  
27 **(AGAINST ALL DEFENDANTS)**

28 70. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as

1 though fully set forth herein.

2       71.     “An employer shall not employ an employee for a work period of more than five hours  
3 per day without providing the employee with a meal period of not less than 30 minutes, except that if  
4 the total work period per day of the employee is no more than six hours, the meal period may be  
5 waived by mutual consent of both the employer and employee. An employer shall not employ an  
6 employee for a work period of more than 10 hours per day without providing the employee with a  
7 second meal period of not less than 30 minutes, except that if the total hours worked is no more than  
8 12 hours, the second meal period may be waived by mutual consent of the employer and the employee  
9 only if the first meal period was not waived.” Labor Code § 512; IWC Wage Order Nos. 1–2001 to  
10 16–2001, § 11; IWC Wage Order No. 17-2001, § 9; 8 Cal Code Regs §§ 11010-11160, § 11; 8 Cal  
11 Code Regs § 11170, § 9.

12       72.     At all relevant times herein, Labor Code §§ 226.7 and 512 (a), 1198 and the applicable  
13 IWC Wage Order also require employers to provide a second meal break of not less than 30 minutes  
14 if an employee works over 10 hours per day or to pay an employee one additional hour of pay at the  
15 employee’s regular rate, except that if the total hours worked is no more than 12 hours, the second  
16 meal period may be waived by mutual consent of the employer and the employee only if the first  
17 meal period was not waived.

18       73.     “An employer shall not require an employee to work during a meal ... period mandated  
19 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare  
20 Commission .... If an employer fails to provide an employee a meal ... period in accordance with a  
21 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order  
22 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of  
23 pay at the employee's regular rate of compensation for each workday that the meal ... period is not  
24 provided.” Lab. Code § 226.7 (b) & (c).

25       74.     At all relevant times, Plaintiff and class members regularly worked more than five  
26 hours per day, and were thereby entitled to take uninterrupted 30-minute meal periods on each day of  
27 work.

28       75.     At all relevant times herein, Defendants had, and continue to have, a company-wide

1 policy and/or practice of understaffing while simultaneously assigning demanding workloads, and  
2 interrupting meal periods with work-related phone calls and texts which had the combined effect of  
3 preventing Plaintiff and class members from taking all timely, uninterrupted meal periods to which  
4 they were entitled. Additionally, Defendants had no policy and/or practice of scheduling meal periods  
5 for Plaintiff and class members. As a result of Defendants' policies and/or practices, Plaintiff and  
6 class members had to work through some or all of their meal periods, have their meal periods  
7 interrupted to return to work, and/or wait extended periods of time before taking meal periods.

8 76. Defendants did not provide Plaintiff and class members with second 30-minute meal  
9 periods on days that they worked in excess of 10 hours in one day. Plaintiff and class members worked  
10 10 or more hour shifts and, at times, up to 12 or more hours in a shift without being permitted or  
11 authorized to take a second 30-minute meal period.

12 77. Plaintiff is also informed and believes that Defendants engaged in a systematic,  
13 company-wide practice and/or policy of not paying meal period premiums for Plaintiff and class  
14 members, regardless of whether they were able to take a compliant meal break, in violation of the  
15 applicable IWC Wage Order and Labor Code sections 226.7 and 512 (a). As a result, Defendants  
16 failed to provide Plaintiff and class members compliant meal periods in violation of California Labor  
17 Code sections 226.7 and 512 and failed to pay the full meal period premiums due.

18 78. As alleged herein, Plaintiff and the Class are not exempt from the meal period  
19 requirements of the applicable Code of Regulations and IWC Orders. Consequently, Defendants'  
20 conduct violates the applicable IWC Wage Order, and California Labor Code §§ 226.7, 512 (a), and  
21 1198. Plaintiff and class members are therefore entitled to recover from Defendants one additional  
22 hour of pay at the employee's regular rate of compensation for each work day that the meal period  
23 was not provided, plus interest thereon and costs of suit in an amount subject to proof at trial.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST PERIODS**

26 **LABOR CODE §§ 226.7 and 1198**

27 **(AGAINST ALL DEFENDANTS)**

28 79. Employees must be given 10-minute net rest periods for every 4 hours of work, to be

1 taken in the middle of each 4-hour period insofar as practicable. However, a rest period need not be  
2 provided for employees whose total daily work is less than 3.5 hours. Thus, employees are entitled to  
3 one 10-minute net rest period for shifts from 3.5 to 6 hours in length, two for shifts of more than 6  
4 hours up to 10 hours, and three for shifts of more than 10 hours up to 14 hours, and so on. *Brinker*  
5 *Restaurant Corp. v Superior Court*, 53 Cal.4th 1004, 1029 (2012); Wage Order Nos. 1–2001 to 16–  
6 2001, §§11–12 (A); 8 Cal Code Regs §§11010-11160.

7 80. “An employer shall not require an employee to work during a rest ... period mandated  
8 pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare  
9 Commission .... If an employer fails to provide an employee a rest ... period in accordance with a  
10 state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order  
11 of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of  
12 pay at the employee’s regular rate of compensation for each workday that the rest ... period is not  
13 provided.” Lab. Code § 226.7 (b) & (c).

14 81. To comply with its obligation to provide rest periods under California Labor Code §  
15 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how  
16 employees spend their break time, and relieve their employees of all duties — including the obligation  
17 that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM*  
18 *Security Services, Inc.*, 2 Cal. 5<sup>th</sup> 257, 269-270 (2016).

19 82. Defendants’ company-wide policy and practice of understaffing while simultaneously  
20 assigning demanding workloads, prevented Plaintiff and class members from being relieved of all duty  
21 in order to take compliant rest periods.

22 83. Defendants also had a uniform policy of failing to schedule rest breaks. As a result,  
23 Plaintiff and class members missed their rest breaks, would be required to take them late, or would  
24 have their rest breaks interrupted. Plaintiff and class members were prevented from being relieved of  
25 all duty in order to take compliant rest periods and instead would be required to continue working.

26 84. Plaintiff and class members worked shifts in excess of 3 ½ hours, in excess of 6 hours,  
27 and/or in excess or 10 hours without receiving all uninterrupted 10-minute rest periods to which they  
28 were entitled.

85. Defendants have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized or permitted. Thus, Defendants denied Plaintiff and class members rest periods and failed to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

86. As alleged herein, Plaintiff and the Class are not exempt from the rest period requirements of the applicable Code of Regulations and Industrial Welfare Commission Orders.

87. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code §§ 226.7 and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized or permitted, plus interest thereon and costs of suit in an amount subject to proof at trial.

## SIXTH CAUSE OF ACTION

## FAILURE TO TIMELY PAY WAGES

**IN VIOLATION OF LABOR CODE § 204**

88. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as though fully set forth herein.

89. "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 ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Labor Code § 204.

90. "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections ... 204 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." Labor Code § 210.

91. At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiff

1 and the Class by the seventh calendar day following the close of the payroll period. Indeed, as  
2 discussed above, Plaintiff and the Class are owed wages for unpaid overtime, meal periods, rest periods  
3 and unreimbursed business expenses. At no time during their employment were these outstanding  
4 sums ever paid to them. Instead, these outstanding sums continued to accumulate every pay period.  
5 Therefore, Plaintiff and the Class were not paid all wages earned by the seventh calendar day following  
6 the close of their pay periods.

7 92. As a direct and proximate result of Defendants' failure to timely pay wages, Plaintiff  
8 and the Class are entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

9 **SEVENTH CAUSE OF ACTION**  
10 **CIVIL PENALTIES IN VIOLATION OF**  
11 **LABOR CODE § 2699, ET SEQ.**  
12 **(AGAINST ALL DEFENDANTS)**

13 93. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as  
14 though fully set forth herein.

15 94. Under Labor Code § 2698, et seq., Plaintiff, as a aggrieved employee, may bring an  
16 action against defendants, on behalf of himself and other current or former employees, seeking civil  
17 penalties for defendants' violations of the California Labor Code.

18 95. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq.  
19 by virtue of the numerous Labor Code violations he was subjected to as plead herein.

20 96. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings  
21 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse  
22 for necessary business expenditures in violation of Labor Code § 2802, failing to pay overtime in  
23 violation Labor Code §§ 510 and 1198, failing to furnish compliant wage statements and maintain  
24 accurate pay records in violation of § 226, 1174 (d), and 1198, failing to provide meal periods in  
25 violation of §§ 226.7, 512 (a), and 1198, failing to provide rest periods in violation of Labor Code §§  
26 226.7 and 1198, and failure to timely pay wages in violation of Labor Code § 204.

27 97. On October 26, 2021, Plaintiff provided written notice by online filing with the Labor  
28 and Workforce Development Agency and by certified mail to Defendants of the specific provisions of

1 the Labor Code alleged to have been violated, including the facts and theories to support the alleged  
2 violation, as required by Labor Code § 2699.3 (a) (1) (A).

3 98. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and  
4 Workforce Development Agency of its intent to pursue an action against Defendants.

5 99. As a direct and proximate result of Defendants' California Labor Code violations as set  
6 forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period  
7 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent  
8 violation, pursuant to Labor Code § 2699 (f), for those Labor Code sections not expressly providing  
9 for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly  
10 provide for a penalty.

11 100. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the  
12 recovered civil penalties.

### 13 **PRAYER FOR RELIEF**

14 Plaintiff and the Class pray for relief and judgment against Defendants as follows:

15 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess  
16 of \$25,000, exclusive of interest and costs.

### 17 **Class Certification**

- 18 2. That this case be certified as a class action;  
19 3. That Plaintiff be appointed as the representative of the Class and Subclass;  
20 4. That counsel for Plaintiff be appointed as class counsel.

### 21 **As to the First Cause of Action**

### 22 **(Unreimbursed Business Expenses)**

23 5. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802  
24 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

25 6. For unreimbursed business expenses and for all actual, consequential, and incidental  
26 losses and damages, according to proof;

27 7. For interest at the same rate as judgments in civil actions, accruing from the date on  
28 which Plaintiff and the Class incurred the necessary expenditures or loses pursuant to Labor Code §

1 2802;

2 8. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's  
3 enforcement of the rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

4 9. For such other relief that the Court deems just and appropriate.

5 **As to the Second Cause of Action**

6 **(Unpaid Overtime)**

7 10. That the Court adjudge, declare and decree that Defendants violated Labor Code §§  
8 510 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay  
9 overtime wages to Plaintiff and class members;

10 11. For payment of unpaid overtime wages in an amount subject to proof;

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

13 13. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's  
14 enforcement of the rights granted by Labor Code §§ 510 and 1198 pursuant to Labor Code § 1194 (a);  
15 and

16 14. For such other relief that the Court deems just and appropriate.

17 **As to the Third Cause of Action**

18 **(Noncompliant Wage Statements and Payroll Records)**

19 15. That the Court adjudge, declare and decree that Defendants violated Labor Code §§  
20 226 and 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to furnished  
21 compliant, accurate itemized wage statements to Plaintiff and class members and for failure to keep  
22 accurate payroll records;

23 16. For consequential and incidental losses and damages according to proof;

24 17. For injunctive relief pursuant to Labor Code § 226 (h);

25 18. For statutory penalties pursuant to Labor Code § 226 (e);

26 19. For all reasonable costs and attorney's fees incurred by Plaintiff's and the Class's  
27 enforcement of the rights granted by Labor Code §§ 226 pursuant to Labor Code § 226 (e) (1); and

28 20. For such other relief that the Court deems just and appropriate.

1 **As to the Fourth Cause of Action**

2 **(Failure to Provide Meal Periods)**

3 21. That the Court declare, adjudge, and decree that Defendants violated California Labor  
4 Code §§ 226.7, 512 (a), 1198, applicable IWC Wage Orders and Codes of Regulation by willfully  
5 failing to provide all meal periods to Plaintiff and class members;

6 22. That the Court make an award to the Plaintiff and class members of one hour of pay at  
7 each employee's regular rate of pay for each workday that a meal period was not provided;

8 23. For all actual, consequential, and incidental losses and damages, according to proof;

9 24. For premiums pursuant to California Labor Code section 226.7 (b);

10 25. For pre-judgment interest on any unpaid meal period premiums from the date such  
11 amounts were due, or as otherwise provided by law;

12 26. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
13 as otherwise provided by law; and

14 27. For such other relief that the Court deems just and appropriate.

15 **As to the Fifth Cause of Action**

16 **(Failure to Provide Rest Periods)**

17 28. That the Court declare, adjudge, and decree that Defendants violated California Labor  
18 Code §§ 226.7, 1198, applicable IWC Wage Orders and Codes of Regulation by willfully failing to  
19 provide all rest periods to Plaintiff and class members;

20 29. That the Court make an award to the Plaintiff and class members of one hour of pay at  
21 each employee's regular rate of pay for each workday that a rest period was not provided;

22 30. For all actual, consequential, and incidental losses and damages, according to proof;

23 31. For premiums pursuant to California Labor Code section 226.7 (b);

24 32. For pre-judgment interest on any unpaid rest period premiums from the date such  
25 amounts were due, or as otherwise provided by law;

26 33. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
27 as otherwise provided by law; and

28 34. For such other relief that the Court deems just and appropriate.

1 **As to the Sixth Cause of Action**

2 **(Failure to Timely Pay Wages)**

3 35. That the Court declare, adjudge, and decree that Defendants violated California Labor  
4 Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay  
5 wages to Plaintiff and class members;

6 36. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully  
7 withheld from Plaintiff and class members;

8 37. For all actual, consequential, and incidental losses and damages, according to proof;

9 38. For pre-judgment interest on any unpaid wages from the date such amounts were due,  
10 or as otherwise provided by law;

11 39. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or  
12 as otherwise provided by law; and

13 40. For such other relief that the Court deems just and appropriate.

14 **As to the Seventh Cause of Action**

15 **Civil Penalties under the PAGA)**

16 41. That the Court declare, adjudge, and decree that Defendants violated all California  
17 Labor Code sections plead herein, including Labor Code §§ 204, 226, 226.7, 510, 512, 1198 and  
18 2802;

19 42. For civil penalties pursuant to 210, 226.3, 256, 558, 2699 (a) and/or 2699 (a), (f) and  
20 (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 204,  
21 226, 226.7, 510, 512, 1198 and 2802;

22 43. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any  
23 and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead  
24 herein, including Labor Code §§ 204, 226, 226.7, 510, 512, 1198 and 2802;

25 44. For pre-judgment and post-judgment interest as provided by law; and

26 45. For such other and further relief as the Court deems just and appropriate.

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**DEMAND FOR JURY TRIAL**

Plaintiff and the Class hereby demand a trial by jury on all issues.

**PIMENTEL LAW, P.C.**

Dated: February 24, 2022

By:   
Gabriel J. Pimentel, Esq.  
Yesenia L. Rodriguez, Esq.  
Attorneys for Plaintiff and putative class  
members