

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Elihu Berle

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

ESTEBAN AGUILAR, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

CAL POP GROUP, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **21STCV36601**

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE
SECTIONS 226.7 AND 512;**
- (2) VIOLATION OF LABOR CODE
SECTIONS 1194 AND 510;**
- (3) VIOLATION OF LABOR CODE
SECTION 226;**
- (4) VIOLATION OF LABOR CODE
SECTIONS 201-204;**
- (5) BUSINESS AND PROFESSIONS
CODE SECTION 17200 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff Esteban Aguilar (“Plaintiff”) hereby submits his Class Action Complaint for
2 Damages against Defendants Cal Pop Group, Inc., and DOES 1 through 50, inclusive
3 (collectively, “Defendants”), on behalf of himself and the Class of other similarly situated
4 current and former employees of Defendants for meal period and rest break wages, minimum
5 and overtime wages, and penalties as follows:

6 **INTRODUCTION**

7 1. This class action is brought pursuant to Labor Code §§ 203, 226, 226.7, 510,
8 512, 1194, Industrial Welfare Commission (“IWC”) Wage Order 5-2001 (codified as
9 California Code of Regulations Title 8 § 11050), and Business and Professions Code § 17200
10 *et seq.* (Unfair Competition Law (“UCL”)).

11 2. This Complaint challenges Defendants’ systemic illegal employment practices
12 resulting in violations of the stated provisions of the Labor Code and Business and Professions
13 Code against the identified class of employees.

14 3. Plaintiff is informed and believes and thereon alleges Defendants joint and
15 severally acted intentionally and with deliberate indifference and conscious disregard to the
16 rights of all employees in (1) failing to provide meal periods and rest breaks, (2) failing to pay
17 all minimum and overtime wages, (3) failing to provide accurate wage statements, and (4)
18 failing to pay all wages due and owing upon termination of employment.

19 **JURISDICTION AND VENUE**

20 4. This class action is brought pursuant to California Code of Civil Procedure §
21 382. The monetary damages sought by Plaintiff exceed the minimal jurisdictional limits of the
22 Superior Court and will be established according to proof at trial. The damages sought by
23 Plaintiff individually are less than \$75,000.00.

24 5. This Court has jurisdiction over this action pursuant to California Constitution,
25 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes
26 except those given by statute to other courts. The statutes under which this action is brought do
27 not specify any other basis for jurisdiction.

28 6. This Court has jurisdiction over the violations of Labor Code §§ 203, 226,

226.7, 510, 512, 1194, the UCL, and IWC Wage Order 5-2001.

7. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county.

PARTIES

9. Plaintiff is an individual residing in the State of California. Plaintiff was employed by Defendants within the statutory time period.

10. Plaintiff is informed and believes and thereon alleges that Defendant Cal Pop Group, Inc. is a corporation licensed to do business and actually doing business in the State of California, including the County of Los Angeles.

11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and the Class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

12. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement,

1 authorization and consent of each Defendant designated herein.

2 As such, and based upon all the facts and circumstances incident to Defendants'
3 business in California, Defendants are subject to Labor Code §§ 203, 226, 226.7, 510, 512,
4 1194, IWC Wage Order 5-2001, and the UCL.

5 **CLASS ACTION ALLEGATIONS**

6 **13. Definition:** Plaintiff seeks class certification pursuant to California Code of
7 Civil Procedure § 382 of a class of all non-exempt employees of Defendants who worked in
8 California during the period from April 10, 2017¹, to the present, including the following
9 Subclasses:

10 (a) **Meal Period Subclass:** all Defendants' non-exempt employees who
11 worked one or more shifts in excess of six (6) hours in California during
12 the period from April 10, 2017, to the present;

13 **As an alternative to Subclass (a):** all Defendants' non-exempt employees who
14 worked one or more shifts in excess of six (6) hours in California
15 without receiving a 30-minute break during which they were relieved of
16 all duties, during the period from April 10, 2017, to the present;

17 (b) **Second Meal Period Subclass:** all Defendants' non-exempt employees
18 who worked one or more shifts in excess of ten (10) hours in California
19 without receiving a second 30-minute break during the period from
20 April 10, 2017, to the present;

21 **As an alternative to Subclass (b):** all Defendants' non-exempt employees who
22 worked one or more shifts in excess of twelve (12) hours in California
23 without receiving a second 30-minute break during the period from
24 April 10, 2017, to the present

25 (c) **Rest Break Subclass:** all Defendants' non-exempt employees who
26

27 ¹ Pursuant to Emergency Rule 9 of the Judicial Council of California's emergency rules
28 related to the COVID-19 pandemic, "[n]otwithstanding any other law, the statutes of
limitations and repose for civil causes of action that exceed 180 days are tolled from April 6,
2020, until October 1, 2020."

worked one or more shifts of three and one-half (3.5) hours or more in California during the period from April 10, 2017, to the present;

As an alternative to Subclass (c): all Defendants' non-exempt employees who worked one or more shifts of three and one-half (3.5) hours or more in California without receiving a paid 10-minute break during which they were relieved of all duties, during the period from April 10, 2017, to the present;

(d) Overtime Subclass: all Defendants' non-exempt employees who worked in excess of eight (8) hours in a day or forty (40) hours in a workweek in California during the period from April 10, 2017, to the present;

As an alternative to Subclass (d): all Defendants' non-exempt employees who worked in excess of eight (8) hours in a day or forty (40) hours in a workweek in California and were not properly paid all overtime wages during the period from April 10, 2017, to the present;

(e) Minimum Wage Subclass all Defendants' non-exempt employees who worked in California and were not properly paid all minimum wages during the period from April 10, 2017, to the present;

(f) Wage Statement Subclass: all Defendants' non-exempt employees who worked in California and received an itemized wage statement during the period of April 10, 2018, to the present;

(g) Terminated Employee Subclass: all Defendants' non-exempt employees who worked in California and who were not properly paid all wages on termination or within 72 hours thereof during the period of April 10, 2018, to the present.

14. Numerosity: The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants' records, including payroll records.

1 **15. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
3 attorneys are ready, willing and able to fully and adequately represent the Class and Plaintiff.
4 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and
5 currently have a number of wage-and-hour class actions pending in California courts.

6 **16.** Defendants administered a corporate policy, practice and/or procedure of (1)
7 failing to pay all meal period wages and rest break wages, (2) failing to pay all minimum and
8 overtime wages, (3) failing to provide accurate wage statements, (4) failing to timely pay all
9 wages due and owing upon termination of employment, and (5) engaging in unfair business
10 practices. Plaintiff alleges this corporate conduct is accomplished with the advance knowledge
11 and designed intent to willfully withhold appropriate wages for work performed members of
12 the Class.

13 **17. Common Question of Law and Fact:** There are predominant common
14 questions of law and fact and a community of interest amongst Plaintiff and the claims of the
15 Class concerning whether Defendants' policies and practices regularly denied Class Members
16 meal and rest break wages, overtime and minimum wages, accurate wage statements, and
17 wages upon termination of employment.

18 **18. Typicality:** The claims of Plaintiff are typical of the claims of all members of
19 the Class. Plaintiff is a member of the Class and have suffered the alleged violations of Labor
20 Code §§ 201-204, 226, 226.7, 510, 512, 1194, IWC Wage Order No. 5-2001, and the UCL.
21 Plaintiff worked at least one shift in excess of ten hours during which he was not provided all
22 duty-free, legally mandated meal periods. Plaintiff worked at least one shift of 3.5 hours or
23 greater during which he was not authorized and permitted all duty-free, legally mandated rest
24 breaks. Plaintiff worked at least one shift in excess of 12 hours for which he was not paid all
25 overtime and minimum wages at the correct rate of pay. Plaintiff received wage statements
26 during his employment. Plaintiff's employment terminated during the statutory period.

27 **19.** The Labor Code upon which Plaintiff bases his claims is broadly remedial in
28 nature. These laws and labor standards serve an important public interest in establishing

1 minimum working conditions and standards in California. These laws and labor standards
2 protect the average working employee from exploitation by employers who may seek to take
3 advantage of superior economic and bargaining power in setting onerous terms and conditions
4 of employment.

5 **20.** The nature of this action and the format of laws available to Plaintiff and
6 members of the Class identified herein make the class action format a particularly efficient and
7 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
8 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
9 advantage since it would be able to exploit and overwhelm the limited resources of each
10 individual plaintiff with their vastly superior financial and legal resources. Requiring each
11 Class Member to pursue an individual remedy would also discourage the assertion of lawful
12 claims by employees who would be disinclined to file an action against their former and/or
13 current employer for real and justifiable fear of retaliation and permanent damage to their
14 careers at subsequent employment.

15 **21.** The prosecution of separate actions by the individual Class Members, even if
16 possible, would create a substantial risk of (a) inconsistent or varying adjudications with
17 respect to individual Class Members against the Defendants and which would establish
18 potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with
19 respect to individual Class Members which would, as a practical matter, be dispositive of the
20 interest of the other Class Members not parties to the adjudications or which would
21 substantially impair or impede the ability of the Class Members to protect their interests.
22 Further, the claims of the individual members of the Classes are not sufficiently large to
23 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

24 **22.** Such a pattern, practice and administration of corporate policy regarding illegal
25 employee compensation described herein is unlawful and creates an entitlement to recovery by
26 Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the full
27 amount of meal period and rest break premiums, overtime wages and minimum wages, and
28 penalties, including interest thereon, attorneys' fees and costs of suit, as well as consequential

1 damages.

2 **23.** Proof of a common business practice or factual pattern, which Plaintiff
3 experienced and is representative of, will establish the right of each Class Member to recovery
4 on the causes of action alleged herein.

5 **24.** The Class is commonly entitled to a specific fund with respect to the
6 compensation illegally and unfairly retained by Defendants. This action is brought for the
7 benefit of the entirety of all Class and will result in the creation of a common fund.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE SECTION 226.7**

10 **REGARDING MEAL PERIOD AND REST BREAK WAGES**

11 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

12 **THE CLASS AND SUBCLASSES (a), (b), (c), (f), and (g))**

13 **25.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 24 as
14 though fully set forth herein.

15 **26.** In accordance with the mandates of the California Labor Code and the
16 applicable IWC Wage Order, Plaintiff and the Class and Subclasses (a), (b), (c), (f), and (g)
17 had the right to take a 10-minute rest break for every four (4) hours worked or major fraction
18 thereof, and a 30-minute meal period for every five (5) hours worked.

19 **27.** As a pattern and practice, Defendants regularly did not provide employees with
20 all legally-required meal periods and rest breaks and did not provide proper compensation for
21 this failure.

22 **28.** Defendants' policy of failing to provide Plaintiff and the Class and Subclasses
23 (a), (b), (c), (f), and (g) with legally mandated meal periods and rest breaks is a violation of
24 California law.

25 **29.** Defendants willfully failed to pay employees whom they did provide the
26 opportunity to take meal periods and rest breaks the premium compensation set out in Labor
27 Code § 226.7 and the applicable IWC Wage Order, and Plaintiff and the Class and Subclasses
28 (a), (b), (c), (f), and (g) are owed wages for meal period and rest break premiums as set forth

1 above.

2 **30.** Such a pattern, practice and administration of corporate policy as described
3 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class and
4 Subclasses (a), (b), (c), (f), and (g) identified herein, in a civil action, for the balance of the
5 unpaid premium compensation pursuant to Labor Code § 226.7 and the applicable IWC Wage
6 Order, including interest thereon.

7 **31.** Defendants' willful failure to provide Plaintiff and the Class and Subclasses (a),
8 (b), (c), (f), and (g) the wages due and owing them upon separation from employment results in
9 continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
10 Plaintiff and Class Members who have separated from employment are entitled to
11 compensation pursuant to Labor Code § 203.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTION 1194**

14 **REGARDING MINIMUM AND OVERTIME WAGES**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

16 **THE CLASS AND SUBCLASSES (d), (e), (f), and (g))**

17 **32.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as
18 though fully set forth herein.

19 **33.** At all times relevant herein, Defendants were required to compensate their non-
20 exempt employees minimum wages for all hours worked and overtime wages for all hours
21 worked over eight (8) hours in a day or forty (40) hours in a workweek.

22 **34.** As a pattern and practice, Defendants regularly failed to compensate its
23 employees for all hours worked, resulting in a failure to pay all minimum wages and, where
24 applicable, overtime and doubletime wages.

25 **35.** This resulted in Plaintiff and the Class and Subclasses (d), (e), (f), and (g)
26 receiving total wages in an amount less than minimum wage and, when applicable, deprived
27 Plaintiff and the Class and Subclasses (d), (e), (f), and (g) of overtime and doubletime wages at
28 the correct rate of pay.

1 **36.** Such a pattern, practice and administration of corporate policy regarding illegal
2 employee compensation as described herein is unlawful and creates an entitlement to recovery
3 by Plaintiff and the Class and Subclasses (d), (e), (f), and (g) in a civil action, for the unpaid
4 balance of the full amount of minimum and overtime wages owing, including liquidated
5 damages, interest, attorneys' fees, and costs of suit according to the mandate of California
6 Labor Code § 1194.

7 **37.** Defendants' willful failure to provide Plaintiff and the Class and Subclasses (d),
8 (e), (f), and (g) the wages due and owing them upon separation from employment results in
9 continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
10 Plaintiff and Class Members who have separated from employment are entitled to
11 compensation pursuant to Labor Code § 203.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTION 226**

14 **REGARDING RECORD KEEPING**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**
16 **THE CLASS AND SUBCLASSES (a), (b), (c), (d), (e), and (f))**

17 **38.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 37 as
18 though fully set forth herein.

19 **39.** In violation of Labor Code § 226, Defendants failed in their affirmative
20 obligation to keep *accurate* records for their California employees. For example, as a result of
21 Defendants' various Labor Code violations, Defendants failed to keep accurate records of
22 Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e), and (f)'s gross wages earned, total
23 hours worked, net wages earned, and all applicable hourly rates and the number of hours
24 worked at each hourly rate. Plaintiff received at least one such wage statement during his
25 employment with Defendants.

26 **40.** Such a pattern, practice and uniform administration of corporate policy as
27 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
28 Class and Subclasses (a), (b), (c), (d), (e), and (f) identified herein, in a civil action, for all

1 damages and/or penalties pursuant to Labor Code § 226, including interest thereon, penalties,
2 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
3 § 226.

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE SECTION 203**

6 **REGARDING WAITING TIME PENALTIES**

7 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

8 **THE CLASS AND SUBCLASSES (a), (b), (c), (d), (e), and (g))**

9 **41.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 40 as
10 though fully set for herein.

11 **42.** At all times relevant herein, Defendants were required to pay their employees
12 all wages owed in a timely fashion at the end of employment pursuant to California Labor
13 Code §§ 201 to 204.

14 **43.** As a result of Defendants' alleged Labor Code violations alleged above,
15 Defendants regularly failed to pay Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e),
16 and (g) their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting
17 time penalties pursuant to Labor Code § 203.

18 **44.** The conduct of Defendants and their agents and employees as described herein
19 was willfully done in violation of Plaintiff and the Class and Subclasses (a), (b), (c), (d), (e),
20 and (g)'s rights, and done by managerial employees of Defendants.

21 **45.** Defendants' willful failure to provide Plaintiff and the Class and Subclasses (a),
22 (b), (c), (d), (e), and (g) the wages due and owing them upon separation from employment
23 results in a continuation of wages up to thirty (30) days from the time the wages were due.
24 Therefore, Plaintiff and Class Members who have separated from employment are entitled to
25 compensation pursuant to Labor Code § 203.

1 **FIFTH CAUSE OF ACTION**

2 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***

3 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

4 **THE CLASS AND ALL SUBCLASSES)**

5 **46.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 as
6 though fully set for herein.

7 **47.** Defendants, and each of them, have engaged and continue to engage in unfair
8 and unlawful business practices in California by practicing, employing and utilizing the
9 employment practices outlined above, inclusive, to wit, by knowingly denying employees: (1)
10 all meal period wages and rest break premiums, (2) all minimum and overtime wages, (3)
11 accurate wage statements, and (4) all wages due and owing upon termination of employment.

12 **48.** Defendants' utilization of such business practices constitutes unfair, unlawful
13 competition and provides an unfair advantage over Defendants' competitors.

14 **49.** The acts complained of herein occurred within the last four years preceding the
15 filing of the complaint in this action.

16 **50.** Defendants have engaged in unlawful, deceptive and unfair business practices,
17 as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set
18 forth above, thereby depriving Plaintiff and the Class and Subclasses the minimum working
19 condition standards and conditions due to them under the California laws and IWC Wage
20 Orders as specifically described therein.

21 **51.** Plaintiff seeks, on his own behalf, and on behalf of other members of the Class
22 and Subclasses who are similarly situated, full restitution of monies, as necessary and
23 according to proof, to restore any and all monies withheld, acquired and/or converted by the
24 Defendants by means of the unfair practices complained of herein.

25 **PRAYER FOR RELIEF**

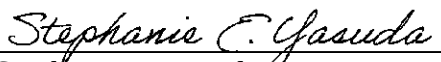
26 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
27 behalf this suit is brought against Defendants, jointly and severally, as follows:

28 1. For an order certifying the proposed Class;

2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as counsel for the Class;
4. Upon the First Cause of Action, for all meal period and rest break wages owed, and for costs;
5. Upon the Second Cause of Action, for all minimum and overtime wages owed, and for costs and attorney's fees;
6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for all minimum wages owed and overtime wages owed, and for waiting time wages according to proof pursuant to California Labor Code §203 and for costs and attorneys' fees;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*; and
9. On all causes of action for attorneys' fees, interest, and costs as provided by California Labor Code §§ 218.6, 226, 1194, and Code of Civil Procedure § 1021.5, and for such other and further relief the Court may deem just and proper.

Dated: October 5, 2021

YOON LAW, APC


Stephanie E. Yasuda
Attorneys for Plaintiff Esteban Aguilar

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, for himself and the Class and Subclasses, hereby demands a jury trial as
3 provided by California law.

4
5 Dated: October 5, 2021

YOON LAW, APC

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7 *Stephanie E. Yasuda*
8 Stephanie E. Yasuda
9 Attorneys for Plaintiff Esteban Aguilar
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