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Attorney for Plaintiff and the Putative Class

Assigned for all Purposes

Judge Peter Wilson

CX-102

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MARCELINO PERALTA VALLEJO,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

ALL METALS PROCESSING OF ORANGE
COUNTY, LLC, a limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 30-2022-01244250-CU-OE-CXC

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Reimburse for Business Expenses
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This is a class action brought by Marcelino Peralta Vallejo (referred to as
3 “Plaintiff”), on behalf of himself and all other similarly situated individuals, against his employer
4 All Metals Processing of Orange County, LLC (referred to as “AMPOC”), in order to hold
5 Defendant accountable for its wage theft and other violations of California wage and hour laws.
6 Plaintiff makes the following allegations on information and belief, except as to allegations
7 pertaining to Plaintiff individually, which are based on his respective personal knowledge.

8 2. AMPOC, is a private, for-profit manufacturer of metal finishing and inspection
9 services in the aerospace, military and defense industries.

10 3. At all relevant times herein, Defendant has implemented common policies and
11 practices designed to maximize profits at the expense of its non-exempt employees. These
12 policies and practices have resulted in systematic violations of California’s wage and hour laws.

13 4. Defendant maximizes profits by cutting labor costs through understaffing, denying
14 meal and rest breaks, unlawfully rounding time worked by its non-exempt employees, cheating its
15 non-exempt employees out of wages and premiums, and related violations of California wage and
16 hour laws. For instance, in order to minimize labor costs, Defendant has implemented unlawful
17 policies with respect to meal and rest breaks. Defendant requires its non-exempt employees to
18 work through meal and rest breaks, and/or take their meal periods and breaks at times after the
19 start of the fifth hour from the beginning of their shifts. Moreover, Defendant does not have a meal
20 period policy regarding non-exempt employees who work ten (10) hours or more and their right to
21 a second meal period. As a result, Plaintiff and other non-exempt employees have been denied the
22 ability to take the legally-compliant meal and rest breaks that they were and are entitled to take.

23 5. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
24 himself and a Class of all current and former non-exempt employees of Defendant’s during the
25 applicable limitations period to compensate these workers for the wages Defendant has stolen
26 from the Class members and to protect current and future workers from being subjected to similar
27 unlawful working conditions perpetrated by Defendant.

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7. Venue is proper in this judicial district and the County of Orange because Plaintiff, and all other persons similarly situated, performed work for Defendant in the County of Orange, Defendant is located within the County of Orange, and Defendant's illegal payroll policies and practices, which are the subject of this action were applied, at least in part, to Plaintiff, and other persons similarly situated, in the County of Orange.

8. Plaintiff is a resident and citizen of the State of California and a former employee of Defendant. Plaintiff was employed by Defendant starting in March 5, 2019 through October 27, 2021 as a Electroplater for Defendant. Plaintiff was assigned to work at Defendant's facility located in Stanton, California.

10. Defendant AMPOC is a licensed business, and at all times relevant herein was, a corporation organized and existing under the laws of the State of California.

11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names. Upon information and belief, each Defendant designated as a DOE is in some manner highly

1 responsible for the occurrences alleged herein, and Plaintiff and Class members' injuries and
2 damages, as alleged herein, were proximately caused by the conduct of such DOE defendants.
3 Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
4 capacities of such DOE defendants when ascertained.

5 12. As a direct and proximate result of the unlawful actions of Defendants, and each of
6 them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in
7 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

8 CLASS ACTION ALLEGATIONS

9 13. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of
10 himself and the following Class:

11 All California citizens who performed work for Defendant in California as non-
12 exempt employees during the statute of limitations period.

13 14. Plaintiff reserves the right to name additional Class representatives as may be
14 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
15 the proposed Class and/or add subclasses before the Court determines whether certification is
16 appropriate

17 15. This action is appropriately suited for a class action because:

18 A. The proposed Class is a significant number. Plaintiff is informed and
19 believes that the proposed Class consists of at least one hundred (100) current and former non-
20 exempt employees, rendering joinder impractical.

21 B. This action involves common questions of law and fact to the proposed
22 Class because the action focuses on Defendant's systematic course of illegal payroll practices and
23 policies, which was applied to all non-exempt employees in uniform violation of the California
24 Labor Code, IWC Wage Orders, and the California Business and Professions Code, which
25 prohibits unfair business practices arising from such violations. Here are a few common questions
26 of law and fact that will drive resolution of this action:

- 27 1. Whether Defendant's failed to provide non-exempt employees with
28 legally compliant meal periods and rest breaks, and whether

1 Defendant's properly paid premium pay as a result of missed and
2 non-compliant meal periods and rest breaks;

- 3 2. Whether Defendant's failed to timely pay wages to non-exempt
4 employees in compliance with California law;
5 3. Whether Defendant's time rounding policy and practice is in
6 violation of California law;
7 4. Whether Defendant's failed to pay overtime and minimum wages to
8 non-exempt employees in compliance with California law;
9 5. Whether Defendant's failed to maintain required records and
10 accurate wage statements for non-exempt employees; and
11 6. Whether Defendant's engaged in unfair and/or unlawful business
12 practices.

13 C. Plaintiff's claims are typical of the proposed Class because Defendant's
14 subjected all of its non-exempt employees to the similar and overlapping violations of the
15 California Labor Code, the applicable IWC wage order, and the California Business and
16 Professions Code.

17 D. Plaintiff is able to fairly and adequately protect the interests of all members
18 of the proposed Class because it is in his best interests to prosecute the claims alleged herein to
19 obtain full compensation due to the proposed Class for all services rendered and hours worked.
20 Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

21 **FIRST CAUSE OF ACTION**

22 **Failure to Provide Required Meal Periods**

23 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 1-2001, § 11**

24 **And All Other Applicable Wage Orders and Applicable Sections]**

25 ***(On Behalf of Plaintiff and the Class against all Defendants)***

26 16. Plaintiff incorporates herein by specific reference, as though fully set forth, the
27 allegations in paragraphs 1 through 15 (A-D).

1 17. During the statute of limitations period, as part of Defendant's unlawful policies
2 and practices to deprive its non-exempt employees of all wages earned and due, Defendant
3 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
4 their meal periods, to completely skip their meal periods, to take late and short meal periods, and
5 Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class
6 members as required under California Labor Code §§ 226.7, 512, and §§11-12 of all applicable
7 IWC Orders.

8 18. Defendant has implemented several common policies and practices that have
9 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
10 periods. For example, Defendant has failed to adequately inform Plaintiff and Class members of
11 their rights to take meal periods under California law. Defendant also understaffed their job site
12 such that Plaintiff and Class members are given so much work to complete that they regularly
13 miss or take non-compliant meal periods. Part and parcel with this practice is Defendant's
14 practice of setting unrealistic deadlines for its non-exempt employees. As a result, Plaintiff and
15 Class members have so much work to complete within their scheduled shifts that they are forced
16 to skip their meal periods altogether, to take them after working longer than five (5) hours, to
17 perform work during their meal periods, or return to work after taking less than a thirty (30)
18 minute meal period. Moreover, Defendant failed to implement meal period policies providing for
19 second meal periods for Class members who work ten (10) hours or more.

20 19. Further, Defendant systemically deprived Plaintiff and Class members of the
21 opportunity to take second meal periods even though they regularly work shifts in excess of ten
22 (10) hours.

23 20. Despite work conditions that systematically result in missed and non-compliant
24 meal periods, and in order to keep labor costs down, Defendant has implemented a policy and
25 practice of discouraging payment of meal period premium payments. In short, Defendant has
26 violated California Labor Code §§ 226.7, §§ 11 and 12 of all applicable IWC Wage Orders, and
27 the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to
28 compensate Plaintiff and Class members who were not authorized and permitted to take a

1 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
2 regular rate of pay for each workday that such a meal period was not authorized or permitted.
3 Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, and §§ 11 and
4 12 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class members for
5 all hours worked during their meal periods.

6 21. As a proximate result of the aforementioned violations, Plaintiff and Class
7 members have been damaged in an amount according to proof at trial, and seek all wages earned
8 and due, interest, penalties, expenses, and costs of suit.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Required Rest Breaks**

11 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 1-2001, § 12 And**

12 **All Other Applicable Wage Orders and Applicable Sections]**

13 ***(On Behalf of Plaintiff and the Class against all Defendants)***

14 22. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 21.

16 23. At all times relevant herein, as part of Defendant's illegal policies and practices to
17 deprive its non-exempt employees of all wages earned and due, Defendant failed to permit
18 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
19 and 512, and §§ 11-12 of all applicable IWC Wage Orders.

20 24. Although shifts can vary in length, Plaintiff and Class members are frequently
21 scheduled to work shifts from eight to in excess of ten hours. California law requires employers to
22 provide employees with the opportunity to take a third rest break during shifts that are 10 hours or
23 longer. However, Defendant's has implemented a policy of not permitting Plaintiff and Class
24 members from taking third rest breaks, even when they work shifts in excess of 10 hours.

25 25. In addition, the same common policies and practices that deprive Plaintiff and
26 Class members from taking their meal periods, as alleged herein, similarly deprive them of their
27 ability to take their first and second rest breaks. For example, Defendant lacked an adequate
28 policy to provide Plaintiff and Class members with rest breaks, failed to properly inform them of

1 their rights to take rest breaks, and grossly understaffed its facilities such that Plaintiff and Class
2 members were regularly deprived of the ability to take rest breaks.

3 26. Defendant further violated California Labor Code § 226.7, §§ 11-12 of all
4 applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code
5 §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest
6 break, in accordance with the applicable wage order, one additional hour of compensation at the
7 proper regular rate of pay for each workday that a rest break was not provided.

8 27. As a proximate result of the aforementioned violations, Plaintiff and Class
9 members have been damaged in an amount according to proof at trial, and seek all wages earned
10 and due, interest, penalties, expenses, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages**

13 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 1-2001, § 3**

14 **And All Other Applicable Wages Orders And Sections]**

15 ***(On Behalf of Plaintiffs and the Class against all Defendants)***

16 28. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 27.

18 29. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage
19 orders, Defendant is required to compensate Plaintiff and Class members for all overtime, which
20 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess
21 of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
22 seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
23 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
24 consecutive day of work in any workweek.

25 30. During the statute of limitations period, Defendant failed to compensate Plaintiff
26 and Class members for all overtime hours worked as required under the foregoing provisions of
27 the California Labor Code and IWC Wage Orders by, among other methods, failing to pay
28 overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California

1 Labor Code §§ 510, 1194 and IWC Wage Order No. 1-2001, § 3 and all other applicable wage
2 orders, requiring, permitting or suffering Plaintiff and Class members to work off-the-clock, and
3 to work through meal and rest breaks, but not compensating them for this time, illegally and
4 inaccurately recording time in which Plaintiff and Class members worked, illegally rounding the
5 time worked by Plaintiff and Class members, and other methods to be discovered.

6 31. Plaintiff and Class members also perform substantial work off-the-clock.
7 Defendant implemented a rounding practice wherein it rounds the time worked by non-exempt
8 employees because it does not record the actual times worked by Plaintiff and Class members, and
9 instead has them record rounded times based on scheduled and/or estimated hours. Plaintiff and
10 Class members regularly work over 80 hours per pay period but are not paid any overtime.

11 32. In violation of California law, Defendant has knowingly and willfully refused to
12 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
13 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
14 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
15 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
16 Defendant to fully perform their obligations under state law, all to their respective damages in
17 amounts according to proof at time of trial, and within the jurisdiction of this Court.

18 33. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
19 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code
20 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
21 Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid
22 balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses,
23 and costs of suit.

24 **FOURTH CAUSE OF ACTION**

25 **Failure to Pay Minimum Wages**

26 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 1-2001,**

27 **And § 4 And All Other Applicable Wages Orders And Sections]**

28 ***(On Behalf of Plaintiffs and the Class against all Defendants)***

34. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 33.

35. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 1-2001 and all applicable wage orders and sections, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

36. During the statute of limitations period, the hourly rates for Plaintiffs and Class members were at or slightly above minimum wage. Based on this common practice, Defendant failed to actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring, permitting or suffering Plaintiffs and Class members to work off-the-clock, such as requiring them to work through meal and rest breaks, but not compensating them for this time as Plaintiff and the Class members were required to write down the time of their work shifts on their time cards which did not accurately reflect their actual hours worked, and failing to include this time in all hours worked, unlawfully rounding their time, and other methods to be discovered.

37. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 1, and any other applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff and Class members have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable wage orders and law, Plaintiffs and Class members are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FIFTH CAUSE OF ACTION

Failure to Pay Timely Wages

[Cal. Lab. Code §§ 204, 210]

(On Behalf of Plaintiff and the Class against all Defendants)

38. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 37.

39. California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 16th and 26th day
2 of the month during which the labor was performed. California Labor Code § 204 further
3 provides that all wages earned by any person in any employment between the 16th and the last
4 day, inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the 1st and the 10th day of the following month.

6 California Labor Code § 204 further provides that all wages eared for labor in excess of the
7 normal work period shall be paid no later than the payday for the next regular payroll period.

8 40. During the statute of limitations period, Defendant, among other things, willfully
9 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
10 limited to, meal and rest break premiums, and payment for work performed off-the-clock, within
11 any time period permissible under Labor Code § 204.

12 41. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
13 Class members are entitled to all available statutory penalties, including but not limited to, civil
14 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
15 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of
16 costs, expenses, and reasonable attorneys' fees.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

19 **[Cal. Lab. Code §§ 201-203]**

20 ***(On Behalf of Plaintiff and the Class against all Defendants)***

21 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 41.

23 43. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant is required to
24 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
25 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
26 at the time of discharge are due and payable immediately.

27 44. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
28 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee

1 quits his or her employment, unless the employee provided seventy-two (72) hours previous notice
2 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
3 of quitting.

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

8 46. During the statute of limitations period, Defendant has willfully failed to pay
9 accrued wages and other compensation to Plaintiff and Class members in accordance with
10 California Labor Code §§ 201 and 202. Because Defendant has failed and continues to fail to
11 properly compensate Plaintiff and Class members for all hours worked when due, and
12 compensation for non-compliant meal and rest breaks, Defendant has also willfully failed and
13 continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in
14 accordance with California Labor Code §§ 201 and 202.

15 47. As a result, Plaintiff and Class members are entitled to all available statutory
16 penalties, including the waiting time penalties provided in California Labor Code § 203, together
17 with interest thereon, as well as other available remedies.

18 **SEVENTH CAUSE OF ACTION**

19 **Failure to Maintain Required Records**

20 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7 And**

21 **All Applicable Wage Orders And Sections]**

22 ***(On Behalf of Plaintiff and the Class against all Defendants)***

23 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 47.

25 49. During the statute of limitations period, as part of Defendant's illegal payroll
26 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
27 Defendant's knowingly and intentionally failed to maintain records as required under California
28 Labor Code §§ 226, 1174, and §7 of the applicable IWC Wage Orders, including but not limited

1 to, the following records: total daily hours worked by each non-exempt employee; applicable rates
2 of pay; all deductions; meal periods; time records showing when each non-exempt employee
3 begins and ends each workday; and accurate itemized wage statements.

4 50. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
5 Class members have been damaged in an amount according to proof at trial, and are entitled to all
6 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
7 entitled to all available penalties, including but not limited to, penalties pursuant to California
8 Labor Code §§ 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
9 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
10 well as other available remedies.

11 **EIGHTH CAUSE OF ACTION**

12 **Failure to Furnish Accurate Itemized Wage Statements**

13 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 1-2001, § 7 And**

14 **All Applicable Wage Orders And Sections]**

15 ***(On Behalf of Plaintiff and the Class against all Defendants)***

16 51. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 51.

18 52. During the statute of limitations period, Defendant routinely failed to provide
19 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
20 showing each employee's gross wages earned, total hours worked, overtime hours worked and
21 paid, all deductions made, net wages earned, and all applicable hourly rates in effect during each
22 pay period and the corresponding number of hours worked at each hourly rate, in violation of
23 California Labor Code § 226 and §§ 6 and 7 of the applicable IWC Wage Orders.

24 53. Defendant's pay stubs violate Labor Code § 226 because Defendant routinely and
25 intentionally fails to provide Plaintiff and Class members with proper meal and rest breaks but
26 fails to include in their wage statements one (1) additional hour of compensation at their regular
27 rates of pay for each non-compliant meal or rest break. In addition, Defendant required Plaintiff
28 and Class members to work off-the-clock without compensation and illegally rounded the time

1 that they worked, rendering the pay stubs incorrect as to time worked, rates of pay and
2 remuneration. Further, Defendant's wage statement failed to provide for the amounts available
3 and amounts taken relating to COVID-19 sick leave and California supplemental COVID-19 sick
4 leave pursuant to Labor Code §248.2. As a result of these violations, Defendant's pay stubs failed
5 to accurately list the compensation owed and due to Plaintiff and Class members.

6 54. Defendant knowingly and intentionally failed to provide Plaintiff and Class
7 members with timely, accurate, and itemized wage statements in accordance with California Labor
8 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
9 they were being paid for, among other things, all of the hours they worked and at the proper rates
10 of pay.

11 55. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
12 Class members have been damaged in an amount according to proof at trial, and seek all wages
13 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
14 available penalties, including but not limited to penalties pursuant to California Labor Code §§
15 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
16 including but not limited to those provided in California Labor Code § 226(e), as well as other
17 available remedies.

18 **NINTH CAUSE OF ACTION**

19 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

20 **[Cal. Lab. Code § 2802]**

21 ***(On Behalf of Plaintiff and the Class against all Defendants)***

22 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 55.

24 57. California Labor Code § 2802(a) requires an employer to indemnify an employee
25 for all necessary expenditures or losses incurred by the employee in direct consequence of the
26 discharge of her his or her duties, or of his or her obedience to the directions of the employer.
27

58. During the statute of limitations period, Defendant knowingly and willfully failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Defendant, including but not limited to, cellular phone usage, safety equipment and other protective gear at Defendant's place of business, in violation of California Labor Code § 2802.

59. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

TENTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et. seq.*]

(On Behalf of Plaintiff and the Class against all Defendants)

60. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 59.

61. Each and every one of Defendant's acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendants failure to provide required meal and rest breaks, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure pay the accurate rate of pay, failure to furnish accurate itemized wage statements or to maintain required records, and failure indemnify Plaintiff and Class members for necessary expenditures and/or losses incurred in discharging their duties, constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

62. Defendant's violations of California wage and hour laws constitute a business practice because the aforementioned acts and omissions were done repeatedly over a significant

1 period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

2 63. Defendant has avoided payment of wages, the provision of meal and rest breaks,
3 and other benefits as required by the California Labor Code, the California Code of Regulations,
4 and the applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the
5 correct sums of assessment to the state authorities under the California Labor Code and other
6 applicable regulations.

7 64. As a result of these unfair and unlawful business practices, Defendant has reaped
8 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
9 and members of the public. Defendant should be made to disgorge their ill-gotten gains and to
10 restore them to Plaintiff and Class members.

11 65. Defendant's unfair and unlawful business practices entitle Plaintiff and Class
12 members to seek preliminary and permanent injunctive relief, including but not limited to orders
13 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
14 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
15 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
16 time of trial.

17 **ELEVENTH CAUSE OF ACTION**

18 **Representative Action for Civil Penalties**

19 **[Cal. Lab. Code §§ 2698- 2699.5]**

20 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

21 66. Plaintiff incorporates herein by specific reference as though fully set forth the
22 allegations in paragraphs 1 through 65, with exception of the allegations in Paragraphs 15 (A) –
23 (D).

24 67. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
25 § 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-
26 exempt employees of Defendant who are California citizens, pursuant to the procedures specified
27 in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
28 violations of the California Labor Code were committed against Plaintiff.

68. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, 1199, 2802 and all applicable IWC wage order penalties, from Defendant in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226, 226.7, 248.2, 510, 512, 1174, 1194, 1197, 1198 and 1774. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

69. Pursuant to California Labor Code §§ 2699.3, on November 29, 2021, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 1-2001 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;

1 5. For preliminary and permanent injunctive relief enjoining Defendant from violating
2 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from
3 engaging in the unlawful business practices complained of herein;

4 6. For waiting time penalties pursuant to California Labor Code § 203;

5 7. For statutory penalties according to proof, including but not limited to all penalties
6 authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 1174.5, 1775, and
7 1197.1;

8 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
9 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;

10 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
11 Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other
12 applicable provision providing for pre-judgment interest;

13 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
14 218.5, 226, 1194, and California Code of Civil Procedure § 1021.5, California Civil Code §
15 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions
16 providing for attorneys' fees and costs;

17 11. For declaratory relief;

18 12. For an order requiring and certifying the First through Tenth Causes of Action as a
19 class action;

20 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
21 Class counsel; and

22 14. For such further relief that the Court may deem just and proper.

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DATED: February 4, 2022 THE LAW OFFICE OF SCOTT E. WHEELER

By: 
SCOTT ERNEST WHEELER

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CLASS AND REPRESENTATIVE ACTION COMPLAINT