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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JESUS VAZQUEZ, an Individual;

Plaintiff;

v.

FIRBERCO GENERAL ENGINEERING
CONTRACTORS, INC., a California
corporation;

Defendants.

Case Number: 34-2021-00313355-CU-OE-GDS

Second Amended Complaint for:

1. Failure to Pay All Wages, Including Minimum Wages;
2. Failure to Pay All Overtime Wages;
3. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums;
4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums;
5. Failure to Furnish Accurate Itemized Wage Statements;
6. Failure to Pay Wages Timely During Employment;
7. Failure to Pay All Wages Earned and Unpaid at Separation;
8. Failure to Indemnify All Necessary Business Expenditures;

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9. Failure to Maintain Accurate Employment
Records; and
10. Violations of California’s Unfair
Competition Law (Bus. & Prof. Code, §§
17200–17210).

Demand for Jury Trial

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I. INTRODUCTION

- A. Failure to pay all wages, including minimum wages;
- B. Failure to pay all overtime wages;
- C. Failure to provide meal periods and pay missed meal period premiums;
- D. Failure to provide rest periods and pay missed rest period premiums;
- E. Failure to issue compliant wage statements;
- F. Failure to pay wages timely during employment;
- G. Failure to pay all wages earned and unpaid at separation (waiting time penalties);
- H. Failure to indemnify all necessary business expenditures;
- I. Failure to maintain accurate employment records; and
- J. Violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).

3. For the unlawful practices and harms described herein, Plaintiff seeks all economic damages, non-economic damages, compensatory damages, punitive damages, penalties, pre-judgment interest, post-judgment interest, litigation costs, and reasonable attorneys' fees available under

1 applicable law. Plaintiff reserves all rights to seek damages, fees, costs, penalties, and any other
2 available remedies pursuant to applicable law.

3 **II. JURISDICTION & VENUE**

4 4. This Court has subject matter jurisdiction over all causes of action asserted herein
5 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure sections
6 88 and 410.10 because this is a civil action in which the matter in controversy, exclusive of interest,
7 exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of
8 California or is subject to adjudication in the courts of the State of California.

9 5. This Court has personal jurisdiction over Defendants because Defendants have caused
10 injuries in the County of Sacramento and the State of California through their acts, and by their
11 violation of the California Labor Code, the California Business and Professions Code, and California
12 state common law. Defendants transact business, have an agent or agents within the County of
13 Sacramento, and/or otherwise are found within the County of Sacramento, and Defendants are within
14 the jurisdiction of this Court for purposes of service of process.

15 6. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
16 Code of Civil Procedure. Defendants operate within California and do business within Sacramento
17 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff within Sacramento
18 County and surrounding counties where Defendants may remotely operate.

19 **III. THE PARTIES**

20 **A. PLAINTIFF**

21 7. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
22 of California residing in the State of California. Defendants employed Plaintiff within the State of
23 California in the County of Sacramento as an hourly, non-exempt employee with the job title of laborer.
24 Plaintiff's duties included installing underground electrical power.

25 8. Plaintiff was subject to Defendants' policies and/or practices complained of herein and
26 has been deprived of the rights guaranteed to him by the California Labor Code, the California Business
27 and Professions Code, and California state common law.
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1 **B. DEFENDANTS**

2 9. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
3 to and were doing business in Sacramento County and was the legal employer of Plaintiff during the
4 applicable statutory periods.

5 10. Plaintiff is informed and believes, and based thereon alleges, that during the applicable
6 statutory periods for Plaintiff's claims, Defendants did (and continue to do) business in the State of
7 California, County of Sacramento. Defendants' operations are headquartered in Sacramento County.

8 11. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
9 herein, Defendants were and/or are the employers of Plaintiff. At all times herein mentioned, each of
10 said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named
11 Defendants. Furthermore, the Defendants, and each of them, were the agents, representatives, and
12 employees of each and every one of the other Defendants, and at all times herein mentioned were acting
13 within the course and scope of said agency, representation, and employment. Defendants, and each of
14 them, approved of, condoned, or otherwise ratified every one of the acts or omissions complained of
15 herein. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of the
16 acts or omissions complained of herein.

17 12. Plaintiff is further informed, and believes, and thereon alleges, that at all times
18 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
19 existed and now exists a unity of interest and ownership between them such that the individuality and
20 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,
21 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere
22 shells and naked frameworks that their principal uses for the conduct of that Defendant's own business,
23 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
24 identities as the entities responsible for their ownership, management, and financial interests.

25 13. Plaintiff is further informed, and believes, and thereon alleges, that at all times
26 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
27 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
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1 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and
2 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff.

3 **IV. FACTS & ALLEGATIONS**

4 14. Plaintiff was at all relevant times, employed by the Defendants within the State of
5 California. Plaintiff was employed as an hourly, non-exempt employee with the job title of laborer.
6 Plaintiff's duties included installing underground electrical power.

7 15. Plaintiff's employment with Defendants began on or about July 2020, and continued
8 through December 9, 2021. Thus, Plaintiff was employed by Defendants within the statutory periods
9 applicable to the claims described below.

10 **A. MINIMUM WAGE VIOLATIONS**

11 16. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
12 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
13 section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a
14 civil action the unpaid balance of the full amount of this minimum wage." Likewise, the Applicable
15 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
16 (Cal. Code of Regs., tit. 8, §§ 11040, 11160.) Labor Code section 1198 makes unlawful the employment
17 of an employee under conditions that the IWC Wage Orders prohibit.

18 17. These minimum wage standards apply to each hour that employees work. Therefore, an
19 employer's failure to pay for any particular time worked by an employee is unlawful, even if averaging
20 an employee's total pay over all hours worked, paid or not, results in an average hourly wage above
21 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

22 18. Here, Defendants failed to fully conform their pay practices to the requirements of the
23 law during the applicable statutory periods. Plaintiff was not compensated for all hours worked
24 including, but not limited to, all hours he was subject to the control of Defendants and/or suffered or
25 permitted to work under the California Labor Code and the Applicable Wage Orders. Among other
26 violations, Plaintiff was subject to the control of Defendants while off-the-clock and did not receive
27 minimum wage for each hour worked.
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1 19. When employees, such as Plaintiff, are not paid for all hours worked under Labor Code
2 section 1194, they are entitled to recover minimum wages for the time which they received no
3 compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154 F.Supp.3d
4 891 [employees suing for failure to pay overtime could recover liquidated damages under Labor Code
5 section 1194.2 if they also showed they were paid less than minimum wage].) Labor Code sections
6 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its
7 employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid
8 wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

9 20. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
10 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
11 damages, as follows:

12 (1) “For any initial violation that is intentionally committed, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for
14 which the employee is underpaid.”

15 (2) “For each subsequent violation for the same specific offense, two
16 hundred fifty dollars (\$250) for each underpaid employee for each pay
17 period for which the employee is underpaid regardless of whether the
18 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
19 (a).)

20 21. As set forth above, Defendants failed to fully compensate Plaintiff for all minimum
21 wages. Accordingly, Plaintiff is entitled to recover liquidated damages for violations of Labor Code
22 section 1197.1. Based on these same factual allegations, Plaintiff is likewise entitled to penalties under
23 Labor Code sections 1199.

24 **B. OVERTIME VIOLATIONS**

25 22. Labor Code section 510 requires employers to compensate employees who work more
26 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
27 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
28 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate

1 employees at no less than twice the regular rate of pay when an employee works more than twelve
2 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
3 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

4 23. In accordance with Labor Code section 1194 and the Applicable Wage Orders, Plaintiff
5 could not then agree and cannot now agree to work for a lesser wage than the amount provided by
6 Labor Code sections 510 or the Applicable Wage Orders.

7 24. Here, Defendants violated their duty to accurately and completely compensate Plaintiff
8 for all overtime worked. Plaintiff regularly worked hours that entitled him to overtime compensation
9 under the law but were not fully compensated for those hours.

10 25. Moreover, during the applicable statutory periods, Defendants had a policy and practice
11 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
12 Defendants paid overtime wages to Plaintiff, Defendants failed to include all compensation when
13 calculating the regular rate of pay used in overtime calculations and when paying overtime.

14 26. For instance, Plaintiff would often receive, along with his hourly rates of pay for his
15 working hours, additional remuneration and/or non-discretionary bonus pay. Defendants, however,
16 calculated the regular rate of pay for Plaintiff without factoring into the regular rate of pay all other
17 non-hourly pay earnings received during the pay period. As a result, Plaintiff were underpaid overtime
18 wages when they worked in excess of eight hours in any workday and/or forty hours in a workweek
19 when such additional forms of remuneration were earned. By their practice of requiring Plaintiff to
20 work in excess of eight hours in a workday and/or forty hours in a workweek without compensating
21 him at the rate of one and one-half (1½) his regular rate of pay, Defendants willfully violated the
22 provisions of Labor Code sections 510, 1194, and 1199.

23 27. These actions were and are in clear violation of California's overtime laws as set forth
24 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
25 §§ 11040, 11160.) As a result of Defendants' faulty policies and practices, Plaintiff was not
26 compensated for all hours worked or paid accurate overtime compensation.

1 **C. MEAL PERIOD VIOLATIONS**

2 28. Labor Code section 512 and the Applicable Wage Orders require employers to provide
3 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
4 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
5 more than five hours per day without providing the employee with a meal period of not less than 30
6 minutes”]; Cal. Code of Regs., tit. 8, §§ 11040, 11160 [“No employer shall employ any person
7 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)
8 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
9 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
10 employ an employee for a work period of more than 10 hours per day without providing the employee
11 with a second meal period of not less than 30 minutes”].)

12 29. “An on-duty meal period is permitted only when the nature of the work prevents an
13 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
14 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
15 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
16 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
17 have “found that the nature of the work exception applies: (1) where the work has some particular
18 external force that requires the employee to be on duty at all times, and (2) where the employee is the
19 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
20 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
21 to determine whether the nature of the work prevents an employee from being relieved before requiring
22 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
23 p. 946.)

24 30. Here, Plaintiff was never asked to sign any enforceable document agreeing to an on-
25 duty meal period. Moreover, nothing in the nature of his work involved the kind of “external force”
26 that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p.
27 945.) Nevertheless, Defendants routinely did not provide compliant off-duty meal periods within the
28 first five hours of work for Plaintiff.

1 31. Meal breaks must be duty-free. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53
2 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s duty-free nature its
3 defining characteristic.”].) Relinquishing control over employees during meal periods requires that
4 employees be “free to leave the employer’s premises” and be “permitted to attend to personal business.”
5 (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under Labor Code section 512,
6 if an employer maintains a uniform policy that does not authorize and permit the amount of meal time
7 called for under the law (as specified in the Labor Code and/or applicable IWC Wage Order), “it has
8 violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th
9 at p. 1033.)

10 32. During the applicable statutory periods here, Plaintiff was regularly denied legally-
11 compliant and timely off-duty meal periods of at least thirty minutes due to Defendants’ unlawful meal
12 period policy and practices. As a result of Defendants’ uniform meal period policies and practices,
13 Plaintiff was often not permitted to take compliant first meal periods before the end of the fifth hour of
14 work. Plaintiff was also regularly not permitted to take second meal periods for shifts in excess of ten
15 hours. Defendants thus violated Labor Code section 512 and the Applicable Wage Orders by failing to
16 advise, authorize, or permit Plaintiff to receive thirty-minute, off-duty meal periods within the first five
17 hours of his shifts.

18 33. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
19 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
20 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
21 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
22 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
23 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
24 Regs., tit. 8, §§ 11040, 11160 [“If an employer fails to provide an employee a meal period in accordance
25 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
26 at the employee’s regular rate of compensation for each workday that the meal period is not
27 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
28 work performed by the employee, including non-discretionary bonuses, commissions, and other forms

1 of wage payments exceeding the employees' base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
2 (2021) 11 Cal.5th 858, 878.)

3 34. Accordingly, for each day that Plaintiff did not receive compliant meal periods, he was
4 and is entitled to receive meal period premiums pursuant to Labor Code section 226.7 and the
5 Applicable Wage Orders. Defendants, however, failed to pay Plaintiff all applicable meal period
6 premiums workdays that Plaintiff did not receive a compliant meal period. Thus, Defendants have
7 violated Labor Code section 226.7 and the Applicable Wage Orders.

8 35. Based on the foregoing, Plaintiff seeks to recover meal period premiums and penalties.

9 **D. REST PERIOD VIOLATIONS**

10 36. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
11 were required to provide Plaintiff with compensated, duty-free rest periods of not less than ten minutes
12 for every major fraction of four hours worked. Under the Applicable Wage Orders, an employer must
13 authorize and permit all employees to take ten minute duty free rest periods for every major fraction of
14 four hours worked. (Cal. Code of Regs., tit. 8, §§ 11040, 11160.)

15 37. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
16 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
17 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
18 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
19 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
20 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
21 factor in all nondiscretionary payments for work performed by the employee, including non-
22 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
23 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
24 Orders set when and for how long the rest period must take place and the Labor Code establishes that
25 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
26 their employees when employers fail to provide rest periods.

27 38. The California Supreme Court has held that, during required rest periods, “employers
28 must relieve their employees of all duties and relinquish any control over how employees spend their

1 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
2 control over employees during rest periods requires that employees be “free to leave the employer’s
3 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
4 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
5 policy:

6 “An employer is required to authorize and permit the amount of rest break time
7 called for under the wage order for its industry. If it does not—if, for example,
8 it adopts a uniform policy authorizing and permitting only one rest break for
9 employees working a seven-hour shift when two are required—it has violated
10 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
11 Cal.4th 1004, 1033.)

12 39. Here, Defendants regularly did not permit Plaintiff to take compliant duty-free rest
13 breaks, free from Defendants’ control as required by Labor Code section 226.7, the Applicable Wage
14 Orders, and applicable precedent. (See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257,
15 269 [concluding that “during rest periods employers must relieve employees of all duties and relinquish
16 control over how employees spend their time.”].) At all relevant times, Plaintiff was not provided with
17 legally-compliant and timely rest periods of at least ten minutes for each four hour work period, or
18 major fraction thereof due to Defendants’ unlawful rest period policies/practices. Plaintiff was often
19 expected and required to continue working through rest periods to meet the expectations Defendants
20 and finish the workday. In some cases when Plaintiff worked more than ten hours in a shift, Defendants
21 failed to authorize and/or permit a third mandated rest period. As a result, Plaintiff was unable to take
22 all compliant rest periods.

23 40. In such cases where Defendants did not offer Plaintiff the opportunity to receive a
24 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to skip those
25 breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an
26 employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees
27 voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at
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p. 1033 [“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”].)

41. In addition to failing to authorize and permit compliant rest periods, Plaintiff was not compensated with one hour’s worth of pay at his regular rate of compensation when he was not provided with a compliant rest period in accordance with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage Orders.

42. Based on the foregoing, Plaintiff seeks to recover rest period premiums and penalties.

E. WAGE STATEMENT VIOLATIONS

43. Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) The gross wages earned;
- (2) The total hours worked by the employee;
- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 44. Due to Defendants’ failure to pay Plaintiff properly as described above, the wage
2 statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the
3 net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226,
5 subdivisions (a)(1), (2), (5), and (9).

6 45. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
7 intentionally failed to provide Plaintiff with accurate itemized wage statements in violation of Labor
8 Code section 226, subdivision (e). Defendants knew that they were not providing Plaintiff with wage
9 statements required by California law but nevertheless failed to correct their unlawful practices and
10 policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant
11 knowingly and intentionally violated Labor Code section 226 because the “[d]efendant knew that it
12 was not providing total hours worked to plaintiff or other employees paid on commission” even though
13 it believed that employees paid solely on commission or commission and salary “are exempt and
14 therefore we do not record hours on a wage statement.”].)

15 **F. UNTIMELY WAGES DURING EMPLOYMENT**

16 46. Labor Code section 204 expressly requires employers who pay employees on a weekly,
17 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
18 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
19 Labor Code section 204 subject to a penalty of:

20 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
21 pay each employee.

22 “(2) For each subsequent violation, or any willful or intentional violation, two
23 hundred dollars (\$200) for each failure to pay each employee, plus 25
24 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
25 (a).)

26 47. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
27 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
28 subd. (a).)

1 48. Due to Defendants’ failure to pay Plaintiff the wages described above, along with meal
2 and rest break premiums, Defendants failed to timely pay Plaintiff within seven calendar days
3 following the close of payroll in accordance with Labor Code section 204 on a regular and consistent
4 basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016
5 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period
6 premiums can support claims under Labor Code sections 203 and 204].)

7 **G. WAITING TIME PENALTIES**

8 49. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
9 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
10 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
11 of Defendants’ failure to pay Plaintiff for the wages described above, along with rest and meal break
12 premiums, Defendants violated and continue to violate Labor Code section 203.

13 50. Due to Defendants’ faulty pay policies, Plaintiff, whose employment with Defendants
14 has concluded, was not compensated for each and every hour worked at the appropriate rate. Despite
15 the employment relationship having concluded, Defendants have failed to pay Plaintiff, whose sums
16 were certain at the time of termination of the employment relationship, within seventy-two hours of his
17 discharge and have failed to pay those sums for thirty days thereafter.

18 **H. UNREIMBURSED BUSINESS EXPENSES**

19 51. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
20 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
22 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
23 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
24 (2007) 42 Cal.4th 554, 562.)

25 52. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
26 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
27 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
28 personal representative of any right or remedy to which he is entitled under the laws of this State.”

1 53. Thus, Plaintiff was and is entitled to reimbursement for the expenses he incurred during
2 the course of his duties. The duty to reimburse even extends to the use of equipment the employee may
3 already own and would be required to pay for anyway. (*Cochran v. Schwan's Home Serv., Inc.* (2014)
4 228 Cal.App.4th 1137, 1144 ["The threshold question in this case is this: Does an employer always
5 have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell
6 phone, or is the reimbursement obligation limited to the situation in which the employee incurred an
7 extra expense that he or she would not have otherwise incurred absent the job? The answer is that
8 reimbursement is always required. Otherwise, the employer would receive a windfall because it would
9 be passing its operating expenses on to the employee."].)

10 54. Here, Defendants failed to fully reimburse Plaintiff for necessary expenditures incurred
11 as a direct consequence and requirement of performing his job duties, including the costs associated
12 with his personal cell phone he required to perform their work. Consequently, Defendants failed to
13 comply with Labor Code section 2802.

14 **I. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

15 55. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
16 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
17 part, as follows:

18 "Any employer who violates subdivision (a) of Section 226 shall be subject to a
19 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
20 violation in an initial citation and one thousand dollars (\$1,000) per employee
21 for each violation in a subsequent citation, for which the employer fails to
22 provide the employee a wage deduction statement or fails to keep the records
23 required in subdivision (a) of Section 226. The civil penalties provided for in
24 this section are in addition to any other penalty provided by law." (Lab. Code, §
25 226.3, emphasis added.)

26 56. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
27 Defendants, to:
28

1 “Keep, at a central location in the state or at the plants or establishments at which
2 employees are employed, payroll records showing the hours worked daily by
3 and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments. These records shall be kept in accordance with rules established
6 for this purpose by the commission, but in any case shall be kept on file for not
7 less than three years. An employer shall not prohibit an employee from
8 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
9 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

10 57. As explained in detail above, Defendants failed to provide Plaintiff with accurate
11 itemized wage statements. Defendants did so, in part, because they failed to accurately track hours
12 worked by Plaintiff. Defendants have thus failed to keep accurate records of the “total hours worked
13 by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject
14 to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other
15 penalty provided by law.” (Lab. Code, § 226.3.)

16 58. The failure to accurately track hours worked also resulted in a failure of Defendants to
17 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
18 including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

19 **V. CAUSES OF ACTION**

20 **First Cause of Action**

21 *Failure to Pay All Wages, Including Minimum Wages*

22 *(Against All Defendants)*

23 59. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 60. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish the
25 right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab.
26 Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11040, 11160.) Labor Code sections 1194, subdivision (a),
27 and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage
28 as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys’ fees

1 and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest
2 accrued thereon.

3 61. Here, Defendants failed to fully conform their pay practices to the requirements of the
4 law during the relevant statutory periods. Plaintiff was not compensated for all hours worked including,
5 but not limited to, all hours he was subject to the control of Defendants and/or suffered or permitted to
6 work under the Labor Code and the Applicable Wage Orders.

7 62. Labor Code section 1198 makes unlawful the employment of an employee under
8 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
9 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
10 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
11 in an amount equal to the wages due and interest thereon.

12 63. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
13 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest,
14 in an amount to be established at trial, and he is entitled to recover economic and statutory damages
15 and penalties and other appropriate relief because of Defendants' violations of the Labor Code and
16 Applicable Wage Orders.

17 64. Defendants' practices and policies regarding illegal employee compensation are
18 unlawful and create an entitlement to recovery by Plaintiff in a civil action for the unpaid amount of
19 minimum wages, liquidated damages, including interest thereon, statutory penalties, attorneys' fees,
20 and costs of suit according to Labor Code sections 204, 218.5, 1194, 1194.2, 1197, and 1198, and Code
21 of Civil Procedure section 1021.5.

22 **Second Cause of Action**

23 *Failure to Pay All Overtime Wages*

24 *(Against All Defendants)*

25 65. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 66. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
27 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
28 worked and provide a private right of action for the failure to pay all overtime compensation for

overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiff for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused Plaintiff to work overtime hours but did not compensate him at one and one-half times his regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiff to work double-time hours but did not compensate them at twice his regular rate of pay for such hours in accordance with California law.

67. Defendants failed to fully conform their pay practices to the requirements of California law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay policies and practices of failing to accurately record all the time that non-exempt employees were under the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow Plaintiff to recover in a civil action the unpaid amount of overtime premiums owing in an approximate amount of **\$30,375.00**, including interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

Third Cause of Action

Failure to Provide Meal Periods and Pay Missed Meal Period Premiums

(Against All Defendants)

68. Plaintiff realleges and incorporates by reference all previous paragraphs.

69. Defendants failed in their affirmative obligation to provide Plaintiff with all required meal periods in accordance with the mandates of the Labor Code and the Applicable Wage Orders, for the reasons set forth herein above. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff at his regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

70. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11040, 11160.)

71. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,

1 Plaintiff has sustained economic damages; Plaintiff is informed and believes and thereupon alleges that
2 he is entitled to recover economic and statutory damages and penalties in an approximate amount of
3 **\$6,750.00** because of Defendants' violations of the Labor Code and Applicable Wage Orders.

4 **Fourth Cause of Action**

5 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

6 *(Against All Defendants)*

7 72. Plaintiff realleges and incorporates by reference all previous paragraphs.

8 73. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establish the
9 right of employees to be provided with a rest period of at least ten minutes for each four hour period
10 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11040, 11160.)

11 74. Due to Defendants' unlawful rest period policies and practices described in detail above,
12 Defendants did not authorize and permit Plaintiff to take all rest periods to which he was legally
13 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff
14 at his regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

15 75. The foregoing violations create an entitlement to recovery by Plaintiff in a civil action
16 for the unpaid amount of rest period premiums owing in an approximate amount of **\$13,500.00**, in
17 addition to interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage
18 Orders, and California Labor Code section 226.7.

19 **Fifth Cause of Action**

20 *Failure to Furnish Accurate Itemized Wage Statements*

21 *(Against All Defendants)*

22 76. Plaintiff realleges and incorporates by reference all previous paragraphs.

23 77. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
24 time of each payment to furnish an itemized wage statement in writing showing:

- 25 (1) The gross wages earned;
- 26 (2) The total hours worked by the employee;
- 27 (3) The number of piece-rate units earned and any applicable piece rate if
- 28 the employee is paid on a piece rate basis;

- 1 (4) All deductions, provided that all deductions made on written orders of
2 the employee may be aggregated and shown as one item;
3 (5) The net wages earned;
4 (6) The inclusive dates of the period for which the employee is paid;
5 (7) The name of the employee and only the last four digits of his or her social
6 security number or an employee identification number other than a social
7 security number;
8 (8) The name and address of the legal entity that is the employer; and
9 (9) All applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the
11 employee.

12 78. As set forth above, Defendants issued wage statements to Plaintiff that are inadequate
13 under Labor Code section 226, subdivision (a). By failing to pay Plaintiff properly as described above,
14 Defendants failed to include required information on his wage statements, including, but not limited
15 to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision
16 (a).

17 79. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
18 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

19 80. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
20 in violation of Labor Code section 226, subdivision (a), Plaintiff is entitled to recover an initial penalty
21 of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of **\$4,000**
22 from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable
23 attorneys' fees.

24 **Sixth Cause of Action**

25 *Failure to Pay Wages Timely During Employment*

26 *(Against All Defendants)*

27 81. Plaintiff realleges and incorporates by reference all previous paragraphs.
28

82. Labor Code section 200 provides that “wages” include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all wages earned by any person in any employment are payable twice during the calendar month and must be paid not more than seven days following the close of the period when the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay each employee’s full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully withheld.

83. Defendants as a matter of established company policy and procedure in the State of California, scheduled, required, suffered, and/or permitted Plaintiff to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff within seven days of the close of payroll, as required by law.

84. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff.

85. Defendants' pattern, practice, and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff to recover an approximate amount totaling **\$22,493.74**, pursuant to Labor Code section 218, the unpaid balance of the compensation owed to him in a civil action and any applicable penalties, attorney fees, and interest owed to him pursuant to Labor Code sections 210, 218.5, and 218.6.

Seventh Cause of Action

Failure to Pay All Wages Earned and Unpaid at Separation

(Against All Defendants)

86. Plaintiff realleges and incorporates by reference all previous paragraphs.

87. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and ongoing until the violations are corrected. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40

1 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and 202 of the
2 California Labor Code require Defendants to pay all compensation due and owing to its former
3 employees during the actionable period for this cause of action at or around the time that their
4 employment is or was terminated, or ended.

5 88. Section 203 of the Labor Code provides that if an employer willfully fails to pay
6 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
7 employer is liable for penalties in the form of continued compensation up to thirty workdays.

8 89. Due to Defendants' faulty pay policies, Plaintiff, whose employment with Defendants
9 has concluded, was not compensated for each and every hour worked at the appropriate rate. Despite
10 the employment relationship having concluded, Defendants have willfully failed to pay Plaintiff, whose
11 sums were certain at the time of termination of the employment relationship, within seventy-two hours
12 of his discharge and have failed to pay those sums for thirty days thereafter as required by Labor Code
13 sections 201 through 203.

14 90. As a result, Defendants are liable to Plaintiff for waiting time penalties amounting to a
15 total amount of **\$5,940.00** for thirty days wages pursuant to Labor Code section 203. (See, e.g., DLSE
16 Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover
17 waiting time penalties].)

18 **Eighth Cause of Action**

19 *Failure to Indemnify All Necessary Business Expenditures*

20 *(Against All Defendants)*

21 91. Plaintiff realleges and incorporates by reference all previous paragraphs.

22 92. California Labor Code Section 2802 states that employers must "indemnify" an
23 employee for "all necessary expenditures or losses incurred by the employee in direct consequence of
24 the discharge of his or her duties, or of his or her obedience to the directions of the employer." Likewise,
25 Labor Code section 2804 states that "any contract or agreement, express or implied, made by any
26 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall
27 not deprive any employee or his personal representative of any right or remedy to which he is entitled
28 under the laws of this State."

93. Here, Plaintiff paid out of pocket for necessary business expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with his personal cell phone he required to perform his work. Despite knowing that Plaintiff incurred these necessary business expenses, and requiring Plaintiff to use such items, Defendants did not reimburse him.

94. Thus, Plaintiff is entitled to recover the cost of such necessary business expenses, plus interest from the date each incurred such business expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).) Plaintiff is informed and believes and thereupon alleges that he is entitled to recover damages in an approximate amount of **\$3,050.00**.

Ninth Cause of Action

Failure to Maintain Accurate Employment Records

(Against All Defendants)

95. Plaintiff realleges and incorporates by reference all previous paragraphs.

96. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and wages paid to employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. Labor Code section 1174.5 imposes a civil penalty of **\$500.00** for an employer's failure to maintain accurate and complete records.

97. Defendant has intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiff. Thus, Plaintiff has been denied his legal right and protected interest in having available at a central location at the plant or establishment where his is employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

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- 1 **1.** For failure to pay all wages, including minimum wages, an award against Defendants
2 for all compensatory, consequential, general, and special damages according to proof
3 pursuant to Labor Code sections 1194, 1194.2, 1197, and others as may be applicable;
- 4 **2.** For failure to pay all overtime wages, an award against Defendants for all compensatory,
5 consequential, general, and special damages in an approximate amount of **\$30,375.00**;
6 pursuant to Labor Code sections 204, 510, 1194, 1198, and others as may be applicable;
- 7 **3.** For failure to provide meal periods and pay missed meal period premiums, an award
8 against Defendants for all compensatory, consequential, general, and special damages
9 in an approximate amount of **\$6,750.00** pursuant to Labor Code sections 226.7 and 512;
- 10 **4.** For failure to provide rest periods and pay missed rest period premiums, an award
11 against Defendants for all compensatory, consequential, general, and special damages
12 in an approximate amount of **\$13,500.00** pursuant to Labor Code section 226.7;
- 13 **5.** For failure to furnish accurate itemized wage statements, an award against Defendants
14 for all applicable penalties owed to him in the amount of **\$4,000** pursuant to Labor Code
15 section 226, subdivision (e);
- 16 **6.** For failure to pay wages timely during employment, an award against Defendants for
17 the unpaid balance of the compensation owed to Plaintiff and any applicable penalties
18 owed to him in the amount of **\$22,493.74** pursuant to Labor Code section 210;
- 19 **7.** For failure to pay all wages earned and unpaid at separation, an award against
20 Defendants for all statutory waiting time penalties pursuant to Labor Code sections 201
21 through 203, for Plaintiff in in the amount of **\$5,940.00**, equal to his daily wage
22 multiplied by thirty days;
- 23 **8.** For failure to indemnify all necessary business expenditures, an award against
24 Defendants for all unreimbursed business expenses, and interest thereon, in the amount
25 of **\$3,050.00**, pursuant to Labor Code section 2802, and attorneys' fees, pursuant to
26 Labor Code section 2802, subdivision (c);

- 1 **9.** For failure to maintain accurate employment records, an award against Defendants for
2 all penalties in the amount of **\$500.00** pursuant to Labor Code sections 226.3, 1174.5,
3 and others that may be applicable;
- 4 **10.** For the violations of California’s Unfair Competition Law, restitution to Plaintiff of all
5 money and/or property unlawfully acquired by Defendants by means of any acts or
6 practices declared by this Court to be in violation of Business and Professions Code
7 sections 17200 through 17210;
- 8 **11.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
9 and Civil Code sections 3287 and 3289 in the approximate amount of **\$6,074.28**.
- 10 **12.** On all causes of action for which attorneys’ fees may be available, for attorneys’ fees
11 and costs in the amount of **\$16,236.49** as provided by Labor Code sections 218.5, 226,
12 Code of Civil Procedure section 1021.5, and others as may be applicable.
- 13 **13.** For an order enjoining Defendants, and each of them, and their agents, servants, and
14 employees, and all persons acting under, in concert with, or for them, from acting in
15 derogation of any rights or duties adumbrated in this complaint; and
- 16 **14.** For such other and further relief, this Court may deem just and proper.

17 Dated: July 23, 2024

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiff