

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com

3 MAYA CHEAITANI (SBN 335777)
4 maya@spivaklaw.com

5 THE SPIVAK LAW FIRM
6 16530 Ventura Blvd., Ste. 203
7 Encino, CA 91436
8 Telephone (213) 725-9094
9 Facsimile (213) 634-2485

10 Attorneys for Plaintiff,
11 LUIS LARRABURU, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**
14 **(UNLIMITED JURISDICTION)**

15 LUIS LARRABURU, on behalf of himself
16 and all others similarly situated, and as an
17 “aggrieved employee” on behalf of other
18 “aggrieved employees” under the Labor Code
19 Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 AMERICAN MERCHANDISING
23 SPECIALISTS, INC., a North Carolina
24 corporation doing business as AMS Retail
25 Solutions; and DOES 1 through 50, inclusive,

26 *Defendant(s).*

Case No.: 21STCV17704

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Employees for All Hours Worked at Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
4. Failure to Indemnify (Cal. Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201–203)
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)
whaines@uelglaw.com
UNITED EMPLOYEES LAW GROUP, PC
4276 Katella Ave, #301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

1 Plaintiff Luis Larraburu (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 4-2001 (hereafter “the
6 Wage Order”), the Business and Professions Code against defendants AMERICAN
7 MERCHANDISING SPECIALISTS, INC., a North Carolina corporation, and DOES 1-50,
8 inclusive (hereafter collectively referred to as “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former hourly, non-exempt employees in California
11 for unpaid wages and other related relief. These claims are based on Defendants’ alleged failures
12 to (1) pay all wages for all hours worked at the correct rates of pay, (2) provide all rest breaks
13 required by California law, (3) provide all meal periods required by California law, (4) indemnify
14 for business expenses, (5) provide accurate and complete itemized written wage statements, (6)
15 fairly compete, and (7) timely pay final wages upon termination of employment. Accordingly,
16 Plaintiff now seeks to recover unpaid wages and related relief through this class and representative
17 action.

18 **JURISDICTION AND VENUE**

19 3. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff
20 and class members, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiff asserts claims on behalf of himself and class members that solely arise under
23 California law, rather than federal law.

24 5. There is also no basis for federal diversity jurisdiction in this case.

25 6. Venue is proper in Los Angeles County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Los Angeles County because at least some
27 of the transactions that are the subject matter of this Complaint occurred therein and/or because
28 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

29 **PARTIES**

30 7. Defendants employed Plaintiff as an hourly, non-exempt field marketing
31 representative from approximately October of 2019 to approximately January of 2020, at which



1 time his employment ended. Plaintiff worked for Defendants out of their offices in Los Angeles,
2 California and throughout the State of California. At all relevant times, Plaintiff was an
3 “employee” within the meaning of Title 8 California Code of Regulations Section 11040 and an
4 “aggrieved employee” within the meaning of Labor Code Section 2699(c).

5 8. Defendant AMERICAN MERCHANDISING SPECIALISTS, INC. is a
6 corporation organized and existing under the laws of North Carolina and also a citizen of
7 California based on Plaintiff’s information and belief. At all relevant times, it did business in
8 California as AMS Retails Solutions.

9 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
10 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
11 is informed and believes and thereon alleges that said defendants are legally responsible for the
12 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
13 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE defendants
14 when ascertained.

15 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
17 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
18 and scope of such agency or employment, and with the approval and ratification of each of the
19 other Defendants.

20 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
21 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
22 of a practice which resulted in Defendants not paying Plaintiff and other members of the below-
23 described class in accordance with applicable laws as alleged herein.

24 12. Plaintiff is informed and believes and thereon alleges that each and every one of
25 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
26 each acting as agents and/or employees, and/or under the direction and control of each of the other
27 defendants, and that said acts and failures to act were within the course and scope of said agency,
28 employment and/or direction and control.



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FACTUAL ALLEGATIONS

13. In or about October of 2019, Defendants first employed Plaintiff to work as a field marketing representative to drive major appliance sales by providing brand advocacy, training and product knowledge to personnel and managers. Defendants also employed Plaintiff to provide subject matter expertise for products as well as “in-depth of knowledge” of discounts and purchase programs. Plaintiff’s duties included establishing relationships with store associates and management teams to increase sales. Defendants expected him and others in comparable positions to visit its customers to promote vendor products, perform sales/support services and maintain product displays in assigned stores; provide new product information including receiving customer feedback regarding vendor products and services; facilitate sales, marketing and promotional campaigns by acquainting accounts with the latest sales techniques.; regularly conduct training sessions at both store and district levels; and to build, maintain, and update customer database as required. Defendants compensated Plaintiff at an hourly rate of pay of \$20.00. Defendants at all times issued wages to Plaintiff and the Class Members on a biweekly basis. Defendants employed Plaintiff continuously in this capacity until his employment ended in January of 2020.

14. Defendants required Plaintiff and the Class Members to perform work while clock-out and failed to compensate them for this time. At all relevant times, Defendants required Plaintiff and the Class Members to work more than eight hours per day and 40 hours per week. Plaintiff and the Class Members often worked 5 days in a workweek, and an average of 12 hours a day. Defendants prohibited Plaintiff and the Class Members from recording sufficient hours of daily work for payroll purposes to cover all of their worktime. Defendants knew that Plaintiff and the Class Members could not complete all of their required tasks within the hours Defendants allowed them to record. Although Plaintiff and the Class Members worked an average of 12 hours per workday, Plaintiff’s timecards from October 7, 2019, to November 17, 2019, produced by Defendant under mediation privilege, only demonstrate an average workday of 7.5 hours. This is due to Defendants’ policy that prohibited Plaintiff and the Class Members from recording their travel time between assigned store locations. The locations of the stores



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Employee Rights Attorneys
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(Monrovia, Burbank, North Hollywood, Van Nuys, Lancaster) spanned long distances and Plaintiff and the Class Members could spend 4 hours on the road per workday. Plaintiff and the Class Members visited around 4 stores during a workday and spent an average of two hours in each store. It is obvious by Plaintiff's average of 7.5 recorded hours per workday that his recorded hours only include hours in store and not those spent traveling between customers. Plaintiff and the Class Members could only clock-in through the geolocation work application "NI WorkTrak" once they were on store premises, or once they had been driving more than 30 minutes to their first location. Defendants required them to clock-out before they left any customer's store and prohibited Plaintiff and the Class Members from recording any time spent driving between their assigned stores. Therefore, Plaintiff and the Class Members were only compensated for time spent in-store and not for travel time between the many locations they visited during the workday. Furthermore, Defendants discouraged Plaintiff and the Class Members from recording more than 8 hours of work per day and more than 40 per week. Defendants only allowed a minimal amount of overtime hours to be recorded per week even though Plaintiff and the Class Members worked considerably more overtime hours. Defendants permitted Plaintiff and the Class Members to record a minimal amount of overtime hours for "office hours". Defendants required Plaintiff and the Class Members to brief their days and create marketing reports at the end of their workdays. Although Plaintiff and the Class Members spent an average of 2 hours per day creating these reports, they were prohibited from recording more than 2 to 3 hours per week of "office hours."

15. At all relevant times, Defendants required Plaintiff and the Class Members to travel in their personal automotive vehicles between customers locations each day, though it did not compensate them for their travel time and did not reimburse them for all of the mileage they incurred. Defendants paid 50 cents per mile but only after Plaintiff and the Class Members had been driving for more than 30 minutes. Furthermore, Defendants deducted the last 30 minutes of mileage at the end of a workday. Therefore, Defendants failed to reimburse Plaintiff and the Class Members for all mileage expenses.

16. At relevant times within the applicable limitations period, Defendants failed to



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 provide Plaintiff and the Class Members with an off-duty, 30-minute meal period before the
2 end of the fifth hour worked or with a second off-duty, 30-minute meal period before the end
3 of the tenth hour worked. The work Defendants expected Plaintiff and the Class Members to
4 complete each day prevented them from taking such meal periods. Defendants automatically
5 deducted 30 minutes of daily work time from the time records of Plaintiff and the Class
6 Members regardless of whether they were able to take a meal period.

7 17. Defendants further failed to authorize and permit Plaintiff and the Class Members
8 to take ten minute rest breaks every four hours or major fraction thereof. It was impossible for
9 Plaintiff and the Class Members to take rest periods because Defendants expected them to
10 monitor their mobile communication devices at all times. Additionally, the work Defendants
11 expected Plaintiff and the Class Members to complete each day prevented them from taking
12 such rest periods. Defendants did not request an exemption from California's rest period law
13 from the Division of Labor Standards Enforcement. Neither Plaintiff nor any of the Class
14 Members entered into a written waiver of their second meal period with Defendants. Defendants
15 also failed to pay Plaintiff and the Class Members premium wages for days on which it failed
16 to provide them with all timely meal and rest periods.

17 18. Moreover, Defendants failed to pay Plaintiff and the Class Members' overtime
18 wages on bonuses that they earned at least in part during overtime hours. Defendants
19 compensated Plaintiff and the Class Members with a non-discretionary performance based and
20 quarterly bonus. However, Defendants failed to include the value of these bonuses in
21 calculating Plaintiff and the Class Members' overtime wages.

22 19. At all relevant times, Defendants failed to issue to Plaintiff and the Class Members
23 complete and accurate wage statements that state all hours worked at the correct rates of pay,
24 and all wages earned. Defendants knowingly and intentionally failed to state on the wage
25 statements they issued to Plaintiff and all of the other Class Members the unpaid wages
26 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
27 earned, all overtime wages earned, all meal period premium wages earned, all rest break
28 premium wages earned, all hourly rates, and all hours worked at each rate of pay.



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(213) 634-2485 Fax
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20. Defendants also failed to timely pay Plaintiff and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

21. Plaintiff alleges that as a result of Defendants' systematic payroll policies and practices, Plaintiff and other class members were:

A. Not compensated for all hours worked including all overtime hours worked at the correct rates of pay;

B. Not provided with all rest breaks and timely meal periods;

C. Not paid one hour's pay for each workday in which Defendants failed to provide them one or more rest breaks;

D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;

E. Not provided with accurate and complete wage statements; and

F. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

CLASS ACTION ALLEGATIONS

22. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

23. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly, non-exempt employees, including field marketing representatives and employees in comparable positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

24. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses and/or by limitation to particular issues.

25. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes that the actual number exceeds the



1 minimum required for numerosity under California law.

2 26. **Commonality and Predominance:** Common questions of law and fact exist as to
3 all class members and predominate over any questions which affect only individual class
4 members. These questions include, but are not limited to:

5 A. Whether Defendants failed to pay all wages to the class for all hours
6 worked including all overtime hours worked at the correct rates of pay?

7 B. Whether Defendants failed to provide the class with all rest breaks as
8 required by section 11 of the Wage Order?

9 C. Whether Defendants failed to provide the class with all meal periods as
10 required by section 10 of the Wage Order?

11 D. Whether Defendants failed to indemnify class members for expenses
12 incurred at Defendants' direction?

13 E. Whether Defendants engaged in unfair competition within the meaning of
14 Business and Professions Code §§ 17200, *et seq.*, with respect to the class?

15 F. Whether Defendants knowingly and intentionally failed to provide the
16 Class Members with accurate written wage statements?

17 G. Whether Defendants willfully failed to provide the class with timely final
18 wages?

19 H. Whether there is money or property that Defendants may have acquired
20 from class members through alleged Labor Code violations?

21 I. Whether class members are entitled to restitution of money or property that
22 Defendants may have acquired from them through alleged Labor Code violations?

23 J. Whether class members are entitled to liquidated damages?

24 K. Whether class members are entitled to prejudgment interest?

25 L. Whether class members are entitled to attorneys' fees?

26 27. **Typicality:** Plaintiff's claims are typical of the other class members' claims.
27 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a
28 lack of a policy which resulted in Defendants failing to comply with the California Labor Code,
and the Business and Professions Code as alleged herein.

29 28. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class members. Plaintiff will fairly and adequately represent and protect the interests of class members.

29. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

30. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

(Lab. Code §§ 221, 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against all Defendants)

31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

32. At all relevant times, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 221, 510, 1194, 1197, and 1198 and the Wage Order.

33. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

34. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 35. Section 3 of the applicable Wage Order states

2 (A) Daily Overtime - General Provisions

3 (1) The following overtime provisions are applicable to employees 18
4 years of age or over and to employees 16 or 17 years of age who
5 are not required by law to attend school and are not otherwise
6 prohibited by law from engaging in the subject work. Such
7 employees shall not be employed more than eight (8) hours in any
8 workday or more than 40 hours in any workweek unless the
9 employee receives one and one-half (1 1/2) times such employee's
10 regular rate of pay for all hours worked over 40 hours in the
11 workweek. Eight (8) hours of labor constitutes a day's work.
12 Employment beyond eight (8) hours in any workday or more than
13 six (6) days in any workweek is permissible provided the employee
14 is compensated for such overtime at not less than:

15 (a) One and one-half (1 1/2) times the employee's regular rate
16 of pay for all hours worked in excess of eight (8) hours up
17 to and including 12 hours in any workday, and for the first
18 eight (8) hours worked on the seventh (7th) consecutive day
19 of work in a workweek; and

20 (b) Double the employee's regular rate of pay for all hours
21 worked in excess of 12 hours in any workday and for all
22 hours worked in excess of eight (8) hours on the seventh
23 (7th) consecutive day of work in a workweek.

24 (c) The overtime rate of compensation required to be paid to a
25 nonexempt full-time salaried employee shall be computed
26 by using the employee's regular hourly salary as one-
27 fortieth (1/40) of the employee's weekly salary.

28 36. While the provisions of Sections 3 through 12 of Wage Order 4 do not apply to
persons employed in administrative or executive positions, sections (1)(A)(1)(f) and (1)(A)(2)(g)
of the Wage Order require that the employer pay such employees a monthly salary equivalent to
no less than two (2) times the state minimum wage for full-time employment. Full-time
employment is defined in Labor Code Section 515(c) as 40 hours per week. Additionally, an
employee is paid on a "salary basis" if:

[T]he employee regularly receives each pay period on a weekly, or less frequent
basis, a predetermined amount constituting all or part of the employee's
compensation, which amount is not subject to reduction because of variations in



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
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(213) 725-9094 Tel
(213) 634-2485 Fax
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the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

29 C.F.R. § 541.602(a); *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398. Moreover, deductions for less than a full day's absence are not permitted unless such deductions are made from an employee's vacation leave bank. 29 C.F.R. § 541.602(a); *Conley v. Pacific Gas and Elec. Co.* (2005) 131 Cal.App.4th 260, 267; see *Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1575.

37. Labor Code § 510 states

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

38. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

39. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

40. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

41. Labor Code § 221 prohibits an employer from taking deductions from an employee's wages without the employee's express written consent or other legal authority for



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 doing so.

2 42. Plaintiff is informed and believes that, at all relevant times, Defendants have
3 applied centrally devised policies and practices to him and class members with respect to working
4 conditions and compensation arrangements.

5 43. At all relevant times, Plaintiff and the other class members worked over eight (8)
6 hours in one workday and/or over 40 hours in a workweek. Defendants, however, failed to pay
7 them for such hours at the legally required rates for overtime work in California.

8 44. As a result of Defendants' unlawful conduct, Plaintiff and the other class members
9 have suffered damages in amounts, subject to proof, to the extent they were not paid the full
10 amount of wages earned during each pay period during the applicable limitations period,
11 including overtime wages.

12 45. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and class members,
13 seek to recover unpaid minimum and overtime wages, liquidated damages in amounts equal to
14 the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees,
15 all in amounts subject to proof.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REST PERIODS**

18 **(Lab. Code §§ 226.7 and 1198)**

19 **(By Plaintiff and the Class against all Defendants)**

20 46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 47. At all relevant times during the applicable limitations period, Plaintiff and the class
22 have been employees of Defendants and entitled to the benefits and protections of California
23 Labor Code §§ 226.7, 1198, and the Wage Order.

24 48. Labor Code § 1198 states,

25 "The maximum hours of work and the standard conditions of labor fixed
26 by the commission shall be the maximum hours of work and the standard
27 conditions of labor for employees. The employment of any employee for
28 longer hours than those fixed by the order or under conditions of labor
prohibited by the order is unlawful."

49. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal
or rest or recovery period mandated pursuant to an applicable statute, or
applicable regulation, standard, or order of the Industrial Welfare



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16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

50. Pursuant to the Wage Order, Plaintiff and the class members were entitled to net rest periods of at least ten minutes for each four hours worked, or major fraction thereof.

51. Defendants failed to provide Plaintiff with all required rest periods free from any work or duties to in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all rest periods required by California law.

52. Defendants failed to pay Plaintiff and the Class Members the additional wages required by California Labor Code § 226.7 for workdays in which one or more rest periods were not provided to them. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all workdays on which one or more rest periods were not provided to them as required by California Labor Code § 226.7.

53. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest periods not provided to them.

54. By reason of the above, Plaintiff and the members of the class are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff and the Class against all Defendants)

55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

56. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

57. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

58. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

59. In relevant part, Section 11 of the Wage Order states

“Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the



employee's regular rate of compensation for each workday that the meal period is not provided."

60. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

61. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the class members were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours.

62. During the relevant time period, Defendants failed to provide Plaintiff with an uninterrupted thirty (30) minute meal period free from any work or duties to for each five (5) hour work period. Defendants thus failed to provide Plaintiff with all required meal periods in accordance with California Labor Code § 512 and the Wage Order. Defendants also arbitrarily deducted 30-minutes of worktime from Plaintiff's daily time records. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all meal periods required by California Labor Code § 512 and the Wage Order, and for deducting daily 30 minutes of time spent on duty from time Plaintiff and the Class Members' time records.

63. Defendants failed to pay Plaintiff and the Class Members the additional wages required by California Labor Code § 226.7 for all workdays in which one or more meal periods were not provided to her. Plaintiff is informed and believes and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 all workdays on which one or more meal periods were not provided to them as required by
2 California Labor Code § 226.7.

3 64. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered
4 damages in amounts subject to proof to the extent they were not paid additional wages owed for
5 all meal periods not provided to them.

6 65. By reason of the above, Plaintiff and the members of the class are entitled to
7 premium wages for workdays in which one or more meal periods were not provided to them
8 pursuant to California Labor Code § 226.7.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **(Lab. Code §§ 1198 and 2802)**

12 **(By Plaintiff and the Class against all Defendants)**

13 66. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 67. At all relevant times, Plaintiff and the class have been employees of Defendants
15 and entitled to the benefits and protections of the California Labor Code §§ 1198, 2802 and the
16 Wage Order.

17 68. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
18 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
19 consequence of the discharge of his or her duties."

20 69. Labor Code § 1198 makes it unlawful for an employer to employ an employee
21 under conditions that violate the Wage Order.

22 70. Defendants did not fully reimburse Plaintiff and the Class Members for all the
23 mileage and travel expenses they incurred in the performance of their job duties and necessary
24 for such performance.

25 71. By reason of the above, Plaintiff and the members of the class are entitled to
26 reimbursement for all necessary expenditures and losses and interest due and owing to within four
27 years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to
28 California Labor Code § 2802(b). Further, Plaintiff, on behalf of himself and the members of the
Class seek reasonable attorney's fees pursuant to Labor Code § 2802(c).



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(213) 725-9094 Tel
(213) 634-2485 Fax
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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

72. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

73. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

74. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized statement showing:

(1) Gross wages earned,

(2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

(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) Net wages earned,

(6) The inclusive dates of the period for which the employee is paid,

(7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

(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.

75. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period



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1 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
2 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
3 is entitled to an award of costs and reasonable attorneys' fees.

4 76. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
5 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
6 injury if the employer fails to provide accurate and complete information as required by California
7 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
8 statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during
10 the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to California Labor Code § 226(a);

12 B. Which deductions the employer made from gross wages to determine the
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
16 address of the legal entity that secured the services of the employer during the pay period; and

17 D. The name of the employee and only the last four digits of his or her social
18 security number or an employee identification number other than a social security number.

19 77. "Promptly and easily determine," as stated in California Labor Code § 226(e),
20 means a reasonable person would be able to readily ascertain the information without reference
21 to other documents or information.

22 78. As alleged herein, Defendants failed to provide Plaintiff and the other Class
23 Members with all meal and rest periods in compliance with California law. They also failed to
24 provide them with premium wages on workdays they failed to provide them with one or more
25 meal and/or rest periods in compliance with California law. Further, Defendants failed to
26 compensate Plaintiff and the other Class Members for all hours worked. Defendants failed to state
27 the wages earned and hours worked, described above, on the wage statements they issued to
28 Plaintiff and Class Members. As a result, Defendants have failed to properly itemize Plaintiff and
the other Class Members' gross and net wages earned, total hours worked, hourly rate of pay, the
corresponding number of hours worked at each hourly rate, and other requirements of California
Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.



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79. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

80. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

81. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

82. Accordingly, with respect to this cause of action, on behalf of himself and the other Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Lab. Code §§ 201-203)

(By Plaintiff and the Class against all Defendants)

83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

84. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California



1 Labor Code §§ 201-203, and the Wage Order.

2 85. Labor Code § 201 provides that all earned and unpaid wages of an employee who
3 is discharged are due and payable immediately at the time of discharge.

4 86. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 87. By failing to pay (1) all overtime premium wages, (2) premium wages for
9 unprovided rest and/or meal periods, (3) wage deductions for partial day absences, and (4) daily
10 30-minute work time deductions to Plaintiff and the class members, Defendants failed to timely
11 pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

12 88. Labor Code § 203 provides that the wages of an employee continue on a daily
13 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
14 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

15 89. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
16 and the class members all of their earned and unpaid wages have been willful in that, at all relevant
17 times, Defendants have deliberately maintained policies and practices that violate the
18 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
19 had the ability to comply with those legal requirements.

20 90. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
21 himself and the class members, in amounts subject to proof not to exceed 30 days of waiting time
22 penalties for each class member.

23 **SEVENTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION**

25 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

26 **(By Plaintiff and the Class against all Defendants)**

27 91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 92. At all relevant times during the applicable limitations period, Plaintiff and the class
have been employees of Defendants and entitled to the benefits and protections of the Business
and Professions Code §§ 17200, *et seq.*

93. The unlawful conduct of Defendants alleged herein amounts to and constitutes



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1 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
2 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
3 gained a competitive advantage over other comparable companies doing business in California
4 that comply with their legal obligations to compensate employees for all earned wages and
reimburse them for all expenses.

5 94. Labor Code § 221 prohibits an employer from taking deductions from an
6 employee's wages without the employee's express written consent or other legal authority for
7 doing so.

8 95. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
9 class members have suffered injuries in fact and lost money or property. Plaintiff and the class
10 members were deprived of wages for all rest and meal periods not provided to them, unlawful
11 deductions, and for all overtime hours worked for which they did not receive wages at the correct
12 rates of pay. Defendants also deprived the Plaintiff and the Class Members with full and adequate
reimbursement for all travel and mileage expenses they incurred.

13 96. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
14 class are entitled to restitution of all monies rightfully belonging to them that Defendants did not
15 pay them or otherwise retained by means of their unlawful and unfair business practices.

16 97. Plaintiff and the class are entitled to reasonable attorneys' fees in connection with
17 their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the
18 substantial benefit doctrine and/or the common fund doctrine.

19 **EIGHTH CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(By Plaintiff and the Class against all Defendants)**

22 98. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 99. The "Aggrieved Employees" are all members of the Class defined above who
24 Defendants employed during the period beginning November 22, 2020, and ending on the date
that final judgment is entered in this action.

25 100. Labor Code § 204 states

26 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
27 or 204.2, earned by any person in any employment are due and payable twice
28 during each calendar month, on days designated in advance by the employer as
the regular paydays. Labor performed between the 1st and 15th days, inclusive,
of any calendar month shall be paid for between the 16th and the 26th day of the



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month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

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

101. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

102. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

103. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

104. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198 and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation



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(penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code § 221, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent violation, or any willful or intentional violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalty amounts established by California Labor Code § 225.5).

D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by California Labor Code § 558).

E. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty amounts established by Labor Code § 1174.5).

F. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198 and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

105. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated November 22, 2021 Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged



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1 to have been violated, including the facts and theories to support the alleged violations. A true
2 and correct copy of the notice to the LWDA dated November 22, 2021 is attached as Exhibit A.
3 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. Plaintiff anticipates
4 that the LWDA will provide written notice to Plaintiff informing him that it does not intend to
investigate these allegations.

5 106. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
6 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
7 connection with their claims for civil penalties.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and judgment
11 against Defendants as follows:

- 12 A. An order that the action be certified as a class action with respect to
Plaintiff's claims for violations of federal and California law;
- 13 B. An order that Plaintiff be appointed class representative;
- 14 C. An order that counsel for Plaintiff be appointed class counsel;
- 15 D. Unpaid wages;
- 16 E. Declaratory relief;
- 17 F. Injunctive and equitable relief;
- 18 G. Liquidated damages;
- 19 H. Civil Penalties;
- 20 I. Restitution;
- 21 J. Statutory penalties;
- 22 K. All actual, consequential and incidental financial losses, including but not
limited to loss of earnings;
- 23 L. Pre-judgment and post-judgment interest;
- 24 M. Costs of suit;
- 25 N. Expert witness fees;
- 26 O. Reasonable attorney's fees; and
- 27 P. Such other relief as the Court deems just and proper.
- 28



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(213) 725-9094 Tel
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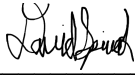
DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 23, 2021

By: 

DAVID SPIVAK,
MAYA CHEAITANI, Attorney for Plaintiff,
LUIS LARRABURU, and all others similarly
situated



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

December 3, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Luis Larraburu / AMS Retail Solutions*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Luis Larraburu (hereafter “Larraburu”) provides notice on behalf of himself and all individuals currently and formerly employed in California as hourly non-exempt employees, including but not limited to field marketing representative employees and employees in comparable positions (hereafter “Aggrieved Employees”) by American Merchandising Specialists, Inc., a North Carolina corporation doing business as AMS Retail Solutions, (hereafter referred to as “AMS”), of violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 450, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

At all relevant times, AMS has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Larraburu and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), paragraph 2.F, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

In or about October of 2019, AMS first employed Larraburu to work as a field marketing representative to drive major appliance sales by providing brand advocacy, training and product knowledge to personnel and managers. AMS also employed Larraburu to provide subject matter expertise for products as well as “in-depth of knowledge” of discounts and purchase programs. Larraburu’s duties included establishing relationships with store associates and management teams to increase sales. AMS expected him and others in comparable positions to visit its customers to promote vendor products, perform sales/support services and maintain product displays in assigned stores; provide new product information including receiving customer feedback regarding vendor products and services; facilitate sales, marketing and promotional campaigns by acquainting accounts with the latest sales techniques.; regularly conduct training sessions at both store and district levels; and to build, maintain, and update customer database as required. AMS compensated Larraburu at an hourly rate of pay of \$20.00. AMS at all times issued wages to Larraburu and the Aggrieved Employees on a biweekly basis. AMS employed Larraburu continuously in this capacity until his employment ended in January of 2020.

AMS required Larraburu and the Aggrieved Employees to perform work while clock-out and failed to compensate them for this time. At all relevant times, AMS required Larraburu and the Aggrieved Employees to work more than eight hours per day and 40 hours per week. Larraburu and the Aggrieved Employees often worked 5 days in a workweek, and an average of 12 hours a day. AMS prohibited Larraburu and the Aggrieved Employees from recording sufficient hours of daily work for payroll purposes to cover all of their worktime. AMS knew that Larraburu and the Aggrieved Employees could not complete all of their required tasks within the hours AMS allowed them to record. Although Larraburu and the Aggrieved Employees worked an average of 12 hours per workday, Plaintiff’s timecards from October 7, 2019, to November 17, 2019, produced by Defendant under mediation privilege, only demonstrate an average workday of 7.5 hours. This is due to AMS policy that prohibited Larraburu and the Aggrieved Employees from recording their travel time between assigned store locations. The locations of the stores (Monrovia, Burbank, North Hollywood, Van Nuys,

Lancaster) spanned long distances and Larraburu and the Aggrieved Employees could spend 4 hours on the road per workday. Larraburu and the Aggrieved Employees visited around 4 stores during a workday and spent an average of two hours in each store. It is obvious by Larraburu's average of 7.5 recorded hours per workday that his recorded hours only include hours in store and not those spent traveling between customers. Larraburu and the Aggrieved Employees could only clock-in through the geolocation work application "NI WorkTrak" once they were on store premises, or once they had been driving more than 30 minutes to their first location. AMS required them to clock-out before they left any customer's store and prohibited Larraburu and the Aggrieved Employees from recording any time spent driving between their assigned stores. Therefore, Larraburu and the Aggrieved Employees were only compensated for time spent in-store and not for travel time between the many locations they visited during the workday. Furthermore, AMS discouraged Larraburu and the Aggrieved Employees from recording more than 8 hours of work per day and more than 40 per week. AMS only allowed a minimal amount of overtime hours to be recorded per week even though Larraburu and the Aggrieved Employees worked considerably more overtime hours. AMS permitted Larraburu and the Aggrieved Employees to record a minimal amount of overtime hours for "office hours". AMS required Larraburu and the Aggrieved Employees to brief their days and create marketing reports at the end of their workdays. Although Larraburu and the Aggrieved Employees spent an average of 2 hours per day creating these reports, they were prohibited from recording more than 2 to 3 hours per week of "office hours."

At all relevant times, AMS required Larraburu and the Aggrieved Employees to travel in their personal automotive vehicles between customers locations each day, though it did not compensate them for their travel time and did not reimburse them for all of the mileage they incurred. AMS paid 50 cents per mile but only after Larraburu and the Aggrieved Employees had been driving for more than 30 minutes. Furthermore, AMS deducted the last 30 minutes of mileage at the end of a workday. Therefore, AMS failed to reimburse Larraburu and the Aggrieved Employees for all mileage expenses.

At relevant times within the applicable limitations period, AMS failed to provide Larraburu and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked or with a second off-duty, 30-minute meal period before the end of the tenth hour worked. The work AMS expected Larraburu and the Aggrieved Employees to complete each day prevented them from taking such meal periods. AMS automatically deducted 30 minutes of daily work time from the time records of Larraburu and the Aggrieved Employees regardless of whether they were able to take a meal period.

AMS further failed to authorize and permit Larraburu and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof. It was impossible for Larraburu and the Aggrieved Employees to take rest periods because AMS expected them to monitor their mobile communication devices at all times. Additionally, the work AMS expected Larraburu and the Aggrieved Employees to complete each day prevented them from taking such rest periods. AMS did not request an exemption from California's rest period law from the Division of Labor Standards Enforcement. Neither Larraburu nor any of the Aggrieved Employees entered into a written waiver of their second meal period with AMS. AMS also failed to pay Larraburu and the Aggrieved Employees premium wages for days on which it failed to provide them with all timely meal and rest periods.

Moreover, AMS failed to pay Larraburu and the Aggrieved Employees' overtime wages on bonuses that they earned at least in part during overtime hours. AMS compensated Larraburu and the Aggrieved Employees with a non-discretionary performance based and quarterly bonus. However, AMS failed to include the value of these bonuses in calculating Larraburu and the Aggrieved Employees' overtime wages.

At all relevant times, AMS failed to issue to Larraburu and the Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. AMS knowingly and intentionally failed to state on the wage statements they issued to Larraburu and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all

overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all hourly rates, and all hours worked at each rate of pay.

AMS also failed to timely pay Larraburu and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

AMS failed to maintain accurate employee records of Larraburu and all of the other Aggrieved Employees.

As set forth below, Larraburu alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and Aggrieved Employees:

- a) AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and double time pay due to off-the-clock work and time deducted from daily work hours for 30-minute off-duty meal periods that did not take place;
- b) AMS required Larraburu and Aggrieved Employees to take on-duty meal periods;
- c) AMS failed to provide Larraburu and Aggrieved Employees with off-duty meal periods;
- d) AMS failed to provide Larraburu and Aggrieved Employees with rest breaks periods as required by law;
- e) AMS failed to compensate Larraburu and Aggrieved Employees at one hour's pay on days when AMS failed to provide them with one or more meal periods in a workday;
- f) AMS failed to compensate Larraburu and Aggrieved Employees at one hour's pay on days when AMS failed to provide them with one or more rest periods in a workday;

- g) AMS failed to indemnify Larraburu and Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties including, but not limited to, travel expenses and mileage;
- h) AMS collected and/or received wages from the paychecks of Larraburu and Aggrieved Employees as a result of arbitrary 30-minute deductions from daily time records;
- i) AMS failed to provide Larraburu and Aggrieved Employees with accurate and complete wage statements;
- j) AMS failed to timely pay Larraburu and Aggrieved Employees all earned and unpaid wages during employment at SES; and
- k) AMS failed to timely pay Larraburu and Aggrieved Employees, who are former employees, all earned and unpaid wages at the time of separation from employment; and
- l) AMS failed to maintain accurate employment records pertaining to Larraburu and all of the other Aggrieved Employees.

Accordingly, Larraburu now seeks civil penalties on behalf of himself and Aggrieved Employees based on AMS's alleged violations of the California Labor Code and the Wage Order.

Wage Order 4

Wage Order 4 applies to "all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis." § 1. At all relevant times during the applicable limitations period, Larraburu was employed by AMS as a field marketing representative to provide technical training to the employees of AMS customers

about the sale of Samsung products. Accordingly, Larraburu and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure to Pay All Wages Earned for All Hours Worked
(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and

one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement

includes, but is not limited, to, non-discretionary bonuses and commissions. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, AMS knowingly failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular, overtime, and double time wages for the work they performed and deducted wages for 30-minute meal periods that never took place.

Accordingly, Larraburu seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest

period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

...

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

AMS has intentionally failed to provide all rest breaks and/or meal periods free from any work duties to Larraburu and Aggrieved Employees as required by law. Additionally, AMS required Larraburu and Aggrieved Employees to take on duty meal periods. As a result, AMS violated California Labor Code §§ 226.7, 512 and 1198.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 512 occurred in addition to an amount sufficient to recover underpaid wages, and \$100 for each aggrieved employee per pay period in which subsequent violations of § 512 occurred in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Section 9 of the Wage Order:

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.

At all relevant times during the applicable limitations period, AMS required Larraburu and Aggrieved Employees to travel in personal vehicles without complete reimbursement for mileage and other travel expenses. AMS failed to fully indemnify Larraburu and Aggrieved Employees for these expenses both during and after their employment ended.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee pay period in which

initial violations of California Labor Code § 2802 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California Labor Code § 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

At all relevant times during the applicable limitations period, AMS automatically deducted 30 minutes of work time from the time records of Larraburu even when they had not taken a duty-free 30-minute meal period. As a result, AMS collected and/or received part of its employees' wages in violation of California Labor Code § 221.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional) and \$200 for each aggrieved employee for each initial violation of California Labor Code § 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (penalties set by California Labor Code § 225.5).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,

- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of sex under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 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) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 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.

As alleged herein, AMS failed to provide Larraburu and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. With regard to such wages, unrecorded hours, and hours deducted from payroll, AMS failed to properly and accurately itemize each employees' gross wages earned, net wages earned, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. As a result, AMS has violated California Labor Code § 226.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation

of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, AMS failed to provide Larraburu and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. As a result, AMS failed to pay Larraburu and Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, AMS has violated California Labor Code § 204.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 204 occurred, and \$200 for each aggrieved employee, per pay period in which subsequent violations of § 204 occurred (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, AMS failed to provide Larraburu and Aggrieved Employees all wages owed including, but not limited to, all premium wages for all rest breaks and/or meal periods that were not provided and all wages that were unlawfully deducted from their paychecks. AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily deducted from daily recorded work hours. As a result, AMS failed to pay Larraburu and Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, AMS has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Larraburu seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) 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 the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall 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 three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 4 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

AMS failed to pay Larraburu and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, regular, overtime, and doubletime pay for unrecorded work and for 30-minute periods arbitrarily

deducted from daily recorded work hours. With regard to such wages, unrecorded hours worked, and deducted hours, AMS has willfully failed to maintain the records of them required by § 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods. Accordingly, Larraburu seeks civil penalties from AMS on behalf of himself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Luis Larraburu
Walter Haines, Esq.

American Merchandising Specialists, Inc. dba AMS Retail Solutions
c/o John L. Barber, Esq.
Efthalia S. Rofos, Esq.
Lewis Brisbois Bisgaard & Smith LLP
650 Town Center Drive, Suite 1400
Costa Mesa, CA 9262
John.barber@lewisbrisbois.com
Thalia.rofos@lewisbrisbois.com

American Merchandising Specialists, Inc. dba AMS Retail Solutions
c/o Armine Antonyan, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Armine.antonyan@lewisbrisbois.com

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 16530 Ventura Blvd., Suite
203, Encino, California 91436.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United
9 States Postal Service. It is the practice that correspondence is deposited
with the United States Postal Service the same day it is submitted for
mailing.

10 On Thursday, December 23, 2021, I served the foregoing document
11 described as **FIRST AMENDED COMPLAINT** interested parties by electronic mail,
addressed as follows:

12 **Thalia S. Rofos, Esq.**
13 **Lewis Brisbois Bisgaard & Smith, LLP**
14 **650 Town Center Drive, Suite 1400,**
15 **Costa Mesa, CA 92626**
Thalia.Rofos@lewisbrisbois.com

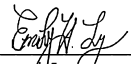
John Barber, Esq.
Armine Antonyan, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
633 W. 5th Street, Suite 4000,
Los Angeles, CA 90071
John.Barber@lewisbrisbois.com
Armine.Antonyan@lewisbrisbois.com

16
17 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
18 electronic service addresses listed above from my electronic service address
emily@spivaklaw.com.

19 EXECUTED on Thursday, December 23, 2021, at Los Angeles, California.

20 XXXX (State) I declare under penalty of perjury under the laws of the State
21 of California that the above is true and correct.

22 _____ (Federal) I declare that I am employed in the office of a member of the
23 bar of this court at whose direction the service was made.

24 
25 Emily Hough Ly
26
27
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