

FILED
Superior Court Of California,
Sacramento
04/27/2022
nzayaad
By _____, Deputy
Case Number:
34-2022-00314092

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

ERIKA COLLAZO, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

T.O.P. MARKETING GROUP, INC., a New
York Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2022-00314092

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff ERIKA COLLAZO ("Plaintiff"), on behalf of herself and all other similarly situated
2 employees, hereby files this Complaint against Defendants T.O.P. MARKETING GROUP, INC., a
3 New York Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as
4 "Defendants"). On information and belief, Plaintiff alleges the following:

5 INTRODUCTION

6 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
7 Plaintiff for failure to provide overtime wages, failure to provide minimum wage, meal and rest period
8 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair
9 competition.

10 JURISDICTION AND VENUE

11 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
12 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
13 Labor Code, California Business and Professions Code, and Wage Order No. 4.

14 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
15 Defendants reside in Sacramento and some of the wrongful acts and violations of law asserted herein
16 occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento
17 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

18 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
19 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
20 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
21 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
22 approximately January 14, 2022. Plaintiff provided facts and legal bases for her claims within the notice
23 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
24 Plaintiff submitted the \$75.00 filing fee. The January 14, 2022 notice was also sent via certified mail to
25 Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
26 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
27 believes that she has exhausted all administrative remedies pursuant to the Private Attorneys General
28 Act and may bring this action on behalf of herself and all Aggrieved Employees. See Cal. Labor Code §

1 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
2 (2005). Aggrieved Employees includes 1) all non-exempt, hourly employees who have, or continue to,
3 work for Defendants in California from January 14, 2021 to the present; and 2) all individuals who have,
4 or continue to, work for Defendants in California as customer service associates, customer service reps,
5 customer service assistants, customer service specialists, warehouse workers, canvassers, event
6 marketers, distribution specialists, sales representatives, or other job title performing similar job duties,
7 whether as an employee or independent contractor, from January 14, 2021 to the present.

8 **PARTIES**

9 5. ERIKA COLLAZO is an individual over the age of eighteen (18) and is a resident of
10 the State of California.

11 6. On information and belief, Plaintiff alleges, T.O.P. MARKETING GROUP, INC., is
12 now and/or at all times mentioned in this Complaint was a New York Corporation and the owner and
13 operator of an industry, business and/or facility doing business in the State of California.

14 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
15 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
16 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
17 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
18 herein, each Defendant was the agent or employee of each of the other Defendants and was acting within
19 the course and scope of such agency or employment. The Defendants are jointly and severally liable to
20 Plaintiff.

21 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
22 other Defendants and was acting within the course and scope of such agency or employment. The
23 Defendants are jointly and severally liable to Plaintiff.

24 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
25 were members of and/or engaged in a joint employment, joint venture, partnership and common
26 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
27 joint venture, partnership and common enterprise.

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10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt, hourly employees who have, or continue to, work for Defendants in California from January 19, 2018 to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) **Numerosity**: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) **Common Questions Predominate**: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid putative class members for all hours worked;
- (2) Whether Defendants paid the correct overtime wages to putative class members;
- (3) Whether Defendants correctly calculated putative class members' regular rates of pay;

- (4) Whether Defendants authorized and permitted meal periods;
- (5) Whether Defendants authorized and permitted rest periods;
- (6) Whether Defendants had a policy to reimburse putative class members for the use of their personal cellphones;
- (7) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (8) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who Defendants failed to pay for all regular and overtime hours. Defendants also did not pay them the correct regular rates of pay. Additionally, Defendants did not provide all meal and rest periods and issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly

1 situated persons to prosecute their common claims in a single forum simultaneously,
2 efficiently, and without the unnecessary duplication of effort and expense that numerous
3 individual actions would engender. Further, as damages suffered by each individual
4 member of the class may be relatively small, the expenses and burden of the individual
5 litigation would make it difficult or impossible for individual members of the class to
6 redress the wrongs done to them, and an important public interest will be served by
7 addressing the matter as a class action. The cost to the court system of adjudication of
8 such individualized litigation would be substantial. Individualized litigation would also
9 present the potential for inconsistent or contradictory judgments.

10 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
11 management of this action that would preclude its maintenance as a class action.

12 GENERAL ALLEGATIONS

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

15 16. Plaintiff worked for Defendants from approximately July 6, 2020 to March 2021. At
16 Defendants' direction, Defendants' office staff, including Plaintiff, would create and post ads for job
17 openings to hire individuals that Defendants would unilaterally classify as independent contractors
18 (herein referred to as canvassers). Office staff would further schedule two interviews for job applicants,
19 including an unpaid day of observation, and then enroll the applicants in Defendants' online portal.
20 Thereafter, Defendants would e-mail the canvassers links to enroll in various campaigns for companies
21 that Defendants contracted with that enrolled individuals in programs for free or discounted phones or
22 flat rate utility bills. Canvassers did not sell any products or services.

23 17. Office staff would earn bonuses for recruiting individuals as canvassers. Canvassers
24 were paid flat sum bonuses (or pieces) per individual enrolled in a utility program (e.g., \$50 per
25 individual). For the phone programs, canvassers were allotted points for obtaining e-mail addresses for
26 individuals and completing enrollment of the individuals in the phone program. The canvassers would
27 then be paid certain amounts depending on the number of points they had allotted. Canvassers also split
28

1 bonuses they earned with other canvassers. For example, a canvasser who recruited other canvassers to
2 work for Defendants would receive a portion of those canvassers' bonuses.

3 18. Defendants did not pay Plaintiff and similarly situated employees for all regular and
4 overtime hours worked. Defendants required office staff to work on the weekends but did not pay them
5 for any work performed on weekends. Defendants also required office staff to clock out at the end of
6 the day but continue working off the clock. Additionally, Defendants did not keep track of the hours
7 that canvassers worked and did not pay them for time spent during daily meetings and trainings or for all
8 hours worked.

9 19. Defendants did not incorporate the value of non-discretionary remuneration, such as
10 bonuses, into the calculation of employees' regular rates of pay for the purpose of calculating overtime
11 and paid sick time owed to them. For example, during the 12/7/20-12/13/20 pay period, Plaintiff's
12 paystub reflects she worked 0.13 hours of overtime and earned a bonus of \$9.36. However, Plaintiff
13 was paid overtime at 1.5x her base hourly rate and no adjustment was made for the value of the bonus
14 she received.

15 20. Defendants did not authorize and permit Plaintiff and similarly situated employees to take
16 all meal and rest periods owed to them. Additionally, Defendants did not have any policy for Plaintiff
17 and similarly situated employees to begin meal periods before their fifth hour of work to the extent a
18 meal period was received. Defendants also discouraged individuals from taking breaks by making
19 statements such as, "breaks are for losers." Defendants did not have any policy authorizing meal and
20 rest periods for canvassers. Defendants did not pay Plaintiff and similarly situated employees any meal
21 or rest period premiums.

22 21. Defendants required Plaintiff and similarly situated employees to use their personal
23 cellphones and vehicles for work without being reimbursed. Defendants did not have any policy to
24 reimburse Plaintiff or similarly situated employees for the use of their personal cellphones or vehicles
25 for work. Office staff used their cellphones to enroll canvassers and communicate on WhatsApp.
26 Canvassers used their cellphones to communicate on WhatsApp and enroll individuals in the phone or
27 utility programs. Office staff would use their personal vehicles to run errands for Defendants throughout
28 the day and canvassers would use their personal vehicles to travel from the office to various locations to

1 canvass. Additionally, Defendants required canvassers to carry a binder and badge provided by
2 Defendants but would charge canvassers if they forgot or lost these items and make deductions from
3 their earnings.

4 22. Defendants did not have any policy to provide canvassers with paid sick leave as was
5 required under the Healthy Workplaces Healthy Families Act of 2014.

6 23. Defendants did not issue any wage statements to canvassers. Defendants issued wage
7 statements to office staff that did not accurately state total hours worked, all applicable rates in effect
8 during the pay period and the number of hours worked at each rate, and gross and net wages.

9 24. Plaintiff and similarly situated employees had unpaid wages owing to them at the time of
10 their separation or termination, including minimum wages, overtime wages, and paid sick time. As of
11 the filing of this Complaint those wages have not been paid.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME WAGES**
(As to all Defendants)

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

17 26. During the class period, Defendants were required to compensate putative class members
18 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per
19 day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in
20 excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code*
21 *§§ 510, 1194.*

22 27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
23 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
24 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
25 worked at their regular rates of pay. Plaintiff and similarly situated employees would work overtime
26 hours on the weekends and at the end of the day after they were told to clock out. Additionally,
27 Defendants paid Plaintiff and similarly situated employees non-discretionary remuneration, such as
28 bonuses, but did not incorporate the value of bonuses into employees' regular rates of pay.

1 28. Plaintiff and similarly situated employees were not exempt from overtime protections
2 employees under the California Wage Orders and Labor Code.

3 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
5 the extent pertinent as if set forth here in full.

6 **SECOND CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(As to all Defendants)**

9 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
10 set forth herein.

11 31. For the period preceding the filing of this Complaint, Defendants were required to
12 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
13 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §
14 1194.

15 32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
16 obligation to pay the minimum wage for each hour worked but failed to do so. Defendants required
17 Plaintiff and similarly situated employees to respond to messages on the weekends when they were not
18 on the clock and to work off the clock during the week after they were instructed to clock out.

19 33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **THIRD CAUSE OF ACTION**
23 **MEAL PERIOD VIOLATIONS**
24 **(As to all Defendants)**

25 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
26 set forth herein.

27 35. An employer must provide an employee a meal period in accordance with the
28 applicable Wage Order, and California Labor Code sections 226.7 and 512.

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1 36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours..

4 37. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
5 provide that employers may not employ employees for a work period for more than ten (10) hours
6 per day without providing the employee with a second meal period of at least thirty (30) minutes.
7 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
8 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
9 (1) hour of pay at their regular rate of compensation for each meal period not provided.

10 38. Defendants employed Plaintiff and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes. Defendants also
12 failed to allow Plaintiff and similarly situated employees to take their first meal period before the
13 completion of their fifth hour of work. Plaintiff and similarly situated employees did not waive their
14 rights to all meal periods throughout their employment.

15 39. Defendants further failed to pay Plaintiff and similarly situated employees the
16 applicable meal period premiums for any such missed meal breaks.

17 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
18 employees have been damaged as stated in the section below entitled "DAMAGES," which is
19 incorporated here to the extent pertinent as if set forth here in full.

20 **FOURTH CAUSE OF ACTION**
21 **REST PERIOD VIOLATIONS**
(As to all Defendants)

22 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
23 set forth herein.

24 42. An employer must provide an employee a rest period in accordance with the
25 applicable Wage Order and California Labor Code section 226.7.

26 43. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
27 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
28 four (4) hours or a major fraction thereof.

44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

45. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, 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 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 the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
2 accurately itemize all hours worked, applicable hourly rates in effect during the pay period and the
3 hours worked at each corresponding rate of pay, and gross and net wages earned. Plaintiff and
4 similarly situated employees were not able to promptly and easily determine their total hours worked
5 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
6 confusion over whether they received all wages owed and were prevented from effectively
7 challenging information on their wage statements.

8 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **SIXTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES**
(As to all Defendants)

13 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
14 set forth herein.

15 52. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. See Cal. Lab. Code § 201.

17 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. See Cal. Lab. Code § 202.

19 54. Plaintiff and similarly situated employees did not receive all wages, including minimum
20 and overtime wages, meal and rest period premiums and paid sick time at their termination or within the
21 required time after their separation from employment.

22 55. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. See Cal. Lab. Code § 203.

25 56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Such conduct shows Defendants had knowledge
27 of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining
28 wages owed.

57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

60. Defendants required Plaintiff and similarly situated employees to use their personal cellphones to enroll job applicants, take pictures of IDs, and communicate via WhatsApp. Defendants also required Plaintiff and similarly situated employees to use their personal vehicles for work as described above. Defendants did not pay any reimbursement for personal cellphone or vehicle use.

61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully set forth herein.

63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

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64. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, and paid sick time during their employment or any time thereafter.

65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 511, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- **Violation of Labor Code §§ 510, 511, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)**
- **Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)**
- **Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)**
- **Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)**
- **Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)**

- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B)
(Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide
Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code § 226.8 (Willful Misclassification As Independent
Contractor)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages)

69. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;

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1 4. As to the Third Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 5. As to the Fourth Cause of Action:

- 6 a. Wages in an amount to be proven at trial;
- 7 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 8 section 1021.5;

9 6. As to the Fifth Cause of Action:

- 10 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 11 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 12 violation occurred and one hundred dollars (\$100.00) per employee for each
- 13 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 14 (\$4,000.00);
- 15 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 16 226(e);

17 7. As to the Seventh Cause of Action:

- 18 a. An amount to be proven at trial;
- 19 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

20 8. As to the Ninth Cause of Action:

- 21 a. For civil penalties as provided for in the Labor Code for each enumerated
- 22 violation in an amount proven at trial;
- 23 b. For those Labor Code sections, the violation of which there is no civil penalty
- 24 provided, the default penalty provided in Labor Code section 2699(f): for any
- 25 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 26 period; For any subsequent violation, two hundred dollars (\$200) for each
- 27 aggrieved employee per pay period;
- 28 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

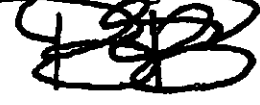
1 d. For any other remedies as allowed by law and/or deemed appropriate by the
2 Court;

3 9. For such other and further relief as this Court may deem just and proper,
4 including, but not limited to:

- 5 a. Wages as proved at trial;
6 b. Injunctive and Declaratory relief;
7 c. Attorney's fees and costs as provided for by law; and
8 d. Interest.

9
10 Dated: April 4, 2022

Shimoda & Rodriguez Law, PC

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12 By: 

13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Brittany V. Berzin
16 Attorneys for Plaintiff
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1 Collazo v. T.O.P. Marketing Group, Inc.
2 Sacramento County Superior Court of California 34-2022-00314092

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Estefania Rodriguez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On April 27, 2022, I served the following documents on the party below:

9 • **First Amended Class Action Complaint**

10 Joel M. Van Parys (SBN 227387) 11 CDF Labor Law LLP 12 900 University Ave, Suite 200 13 Sacramento, CA 95825 14 Phone: (916) 361-0991 Email: jvanparys@cdflaborlaw.com dkhatib@cdflaborlaw.com ekastern@cdflaborlaw.com	
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15 ☐ [By Mail] I am familiar with my employer's practice for the collection and
16 processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action
20 by placing a true copy thereof enclosed in a sealed envelope with postage
thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Elk Grove, California, addressed as set forth
above.

21 ☐ [By Personal Service] By personally delivering a true copy thereof to the
22 office of the addressee above.

23 ☒ [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
24 above. No error was reported by the e-mail service that I used.

25 ☐ [By Overnight Courier] By causing a true copy and/or original thereof to be
26 personally delivered via the following overnight courier service: _____.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is
28 true and correct, and that this declaration was executed on April 27, 2022, at Elk Grove, California.


Estefania Rodriguez