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County of San Diego

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

EDUARDO PENA individually, and on behalf of
all others similarly situated,

Plaintiffs,

v.

STRATEGIC OPERATIONS, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2022-00014701-CU-OE-CTL

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and
7. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff EDUARDO PENA (hereinafter, “Plaintiff”) based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, alleges as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiff brings this action against Defendants Strategic Operations, Inc., and Does 1 through 10 (Strategic Operations, Inc., and Does 1 through 10 are collectively referred to as “Defendants”) for California Labor Code violations and unfair business practices stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, and failure to furnish accurate wage statements.

2. Plaintiff brings the First through Seventh Causes of Action individually and as a class action on behalf of himself and certain current and former employees of Defendants (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

3. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including San Diego County. As such, based upon all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”), and the California Business & Professions Code.

4. Despite these requirements, throughout the statutory period Defendants maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum wages, straight time wages, and overtime wages in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing

1 to maintain accurate records of all meal periods taken or missed, and failing
2 to pay an additional hour's pay for each workday a meal period violation
3 occurred;

4 (c) Failing to authorize and permit employees to take timely and duty-free rest
5 periods in compliance with the California Labor Code and IWC Wage
6 Orders, and failing to pay an additional hour's pay for each workday a rest
7 period violation occurred;

8 (d) Willfully failing to pay employees all minimum wages, straight time wages,
9 overtime wages, meal period premium wages, and rest period premium
10 wages due within the time period specified by California law when
11 employment terminates; and

12 (e) Failing to provide employees with accurate, itemized wage statements
13 containing all the information required by the California Labor Code and
14 IWC Wage Orders.

15 5. On information and belief, Defendants, and each of them were on actual and
16 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
17 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
18 willful and deliberate.

19 6. At all relevant times, Defendants were and are legally responsible for all of the
20 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
21 foregoing paragraphs as the employer of Plaintiff, and the Class. Further, Defendants are
22 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
23 "respondeat superior."

24 7. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiffs and the class members were entitled to one day's rest in seven.
26 In violation of the California Labor Code, Defendants required Plaintiffs and class members to
27 work more than six consecutive days without a day of rest, where the total hours worked exceeded
28 30 hours in any week or six hours in any one day thereof.

THE PARTIES

A. Plaintiffs

8. Plaintiff EDUARDO PENA is a resident of San Diego County, California, who worked for Defendants in San Diego County, California as a Shipping and Receiving Associate from approximately May 2019 to August 2021.

9. Plaintiff MIRNA REYES is a resident of San Diego County, California, who worked for Defendants in San Diego County, California as a Shipping and Receiving Associate from approximately September 2020 to December 2020.

10. Plaintiffs reserve the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Strategic Operations, Inc. is, and at all times herein mentioned, was:

- (a) A California corporation with its principal place of business in San Diego, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in San Diego County; and,
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Strategic Operations, Inc. suffered and permitted Plaintiff, and the Class, to work, and/or controlled their wages, hours, or working conditions.

12. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefor sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff, and the Class, as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

1 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
2 each of them, were residents of, doing business in, availed himself of the jurisdiction of, and/or
3 injured a significant number of the Plaintiff, and the Class, in the State of California.

4 14. Plaintiff is informed and believes and therein alleges that at all relevant times each
5 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
6 other employees described in the class definitions below, and exercised control over their wages,
7 hours, and working conditions. Plaintiff is informed and believes and therein alleges that, at all
8 relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director,
9 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
10 predecessor in interest of some or all of the other Defendants, and was engaged with some or all
11 of the other Defendants in a joint enterprise for profit, and bore such other relationships to some
12 or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged
13 below. Plaintiff is informed and believes and therein alleges that each Defendant acted pursuant
14 to and within the scope of the relationships alleged above, that each Defendant knew or should
15 have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
16 conduct of all other Defendants.

17 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 15. Plaintiff worked for Defendants in California as a non-exempt hourly employee
19 from March 10, 2011 to March 12, 2021. During Plaintiff's employment for Defendants,
20 Defendants paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime.
21 Defendants typically scheduled Plaintiff to work at least 5 days in a workweek and at least 8 hours
22 per day, but Plaintiff often worked more than 8 hours in a workday and more than 40 hours in a
23 workweek.

24 16. Throughout Plaintiff's employment, Defendants failed to pay Plaintiffs for all hours
25 worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiffs
26 with meal periods, failed to authorize and permit Plaintiffs to take rest periods, failed to pay timely
27 pay all final wages to Plaintiffs when Defendants terminated their employment and failed to furnish
28

1 accurate wage statements to Plaintiffs. As discussed below, Plaintiff's experience working for
2 Defendants was typical and illustrative.

3 17. Throughout the statutory period, Defendants maintained a policy and practice of not
4 paying Plaintiff, and the Class, for all hours worked, including minimum wages, straight time
5 wages, and overtime wages. Defendants regularly used a system of time rounding in a manner that
6 resulted, over a period of time, in failing to compensate Plaintiff, and the Class, properly for all
7 the time they have actually worked, even though the realities of Defendants' operations are such
8 that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly,
9 Defendants frequently paid Plaintiff, and the Class, less than all their work time. Some of this
10 unpaid work also should have been paid at the overtime rate. In failing to pay for all hours worked,
11 Defendants also failed to maintain accurate records of the hours Plaintiff, and the Class, worked.

12 18. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff,
13 and the Class with legally compliant meal periods. Defendants regularly, but not always, required
14 Plaintiff, and the Class to work in excess of five consecutive hours a day without providing a 30-
15 minute, uninterrupted, and duty-free meal period for every five hours of work, or without
16 compensating Plaintiff, and the Class for meal periods that were not provided by the end of the
17 fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over
18 Plaintiff, and the Class by requiring, pressuring, or encouraging them to perform work tasks which
19 could not be completed without working in lieu of taking mandatory meal periods, or by denying
20 Plaintiff, and the Class permission to take a meal period. For instance, Plaintiff would clock out
21 for lunch, to be required to return to work on the floor, performing duties common to all
22 shipping/receiving associates. Accordingly, Defendants' policy and practice was not to provide
23 meal periods to Plaintiff, and the Class in compliance with California law.

24 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
25 and permit Plaintiff, and the Class to take legally compliant rest periods. Defendants regularly,
26 but not always, required Plaintiff, and the Class to work in excess of four consecutive hours a day
27 without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free
28 rest period for every four hours of work (or major fraction of four hours), or without compensating

1 Plaintiff, and the Class for rest periods that were not authorized or permitted. Instead, Defendants
2 continued to assert control over Plaintiff, and the Class by requiring, pressuring, or encouraging
3 them to perform work tasks which could not be completed without working in lieu of taking
4 mandatory rest periods, or by denying Plaintiff, and the Class permission to take a rest period. For
5 instance, Defendants would often assign work to Plaintiff, and the Class and then pressure them to
6 continue working throughout their rest periods in order to complete the task as quickly as possible.
7 Plaintiff felt that he could not take their rest breaks if the task they were working on was not yet
8 completed. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff,
9 and the Class to take rest periods in compliance with California law.

10 20. Throughout the statutory period, Defendants failed to furnish Plaintiff, and the Class
11 with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net
12 wages earned (including correct hours worked, correct wages for meal periods that were not
13 provided in accordance with California law, and correct wages for rest periods that were not
14 authorized and permitted to take in accordance with California law). As a result of these violations
15 of California Labor Code § 226(a), the Plaintiff, and the Class suffered injury because, among
16 other things:

- 17 (a) the violations led them to believe that they were not entitled to be paid
18 minimum wages, straight time wages, overtime wages, meal period premium
19 wages, and rest period premium wages, even though they were entitled;
- 20 (b) the violations led them to believe that they had been paid the minimum,
21 straight time, overtime, meal period premium, and rest period premium
22 wages, even though they had not been;
- 23 (c) the violations hindered them from determining the amounts of minimum,
24 straight time, overtime, meal period premium, and rest period premium
25 wages owed to them;
- 26 (d) in connection with their employment before and during this action, and in
27 connection with prosecuting this action, the violations caused them to have
28 to perform mathematical computations to determine the amounts of wages

owed to them, computations they would not have to make if the wage statements contained the required accurate information;

(e) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;

(f) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, and the Class were entitled, and Plaintiff, and the Class were paid less than the wages and wage rates to which they were entitled.

21. Thus, Plaintiff, and the Class are owed the amounts provided for in California Labor Code § 226(e).

CLASS ACTION ALLEGATIONS

22. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure § 382.

23. All claims alleged herein arise under California law for which Plaintiff seek relief authorized by California law.

24. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.

25. At all material times, Plaintiff was a member of the Class.

26. Plaintiff undertakes this concerted activity to improve the wages and working conditions of all Class Members.

27. There is a well-defined community of interest in the litigation and the Class and Subclass are readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical.

The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than 40 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

28. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to provide Class Members with timely final wages;
- (e) Failed to provide Class Members with accurate wage statements; and
- (f) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

29. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- (f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
 - 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
 - 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

30. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiffs would contemplate the

1 use of additional techniques and forms commonly used in class actions, such as published notice,
2 e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable
3 to the Class and deemed necessary and/or appropriate by the Court.

4 **FIRST CAUSE OF ACTION**

5 **(Against all Defendants for Failure to Pay Minimum and Straight Time Wages for All**
6 **Hours Worked)**

7 31. Plaintiff incorporates by reference and re-allege as if fully stated herein each and
8 every allegation set forth above.

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

12 33. At all relevant times herein mentioned, Defendants knowingly failed to pay to
13 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
14 compensation for each hour worked as alleged above, Defendants willfully violated the provisions
15 of California Labor Code § 1194, and any additional applicable Wage Orders, which require such
16 compensation to non-exempt employees.

17 34. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight
18 time wages for all non-overtime hours worked for Defendants.

19 35. By and through the conduct described above, Plaintiff and the Class have been
20 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

21 36. By virtue of the Defendants’ unlawful failure to pay additional compensation to
22 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
23 suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff
24 and the Class, but which exceed the jurisdictional minimum of this Court, and which will be
25 ascertained according to proof at trial.

26 37. By failing to keep adequate time records required by California Labor Code §
27 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
28 compensation due Plaintiff and the Class.

39. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a month.

40. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

41. Plaintiff incorporates by reference and re-allege as if fully stated herein each and every allegation set forth above.

42. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

43. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

44. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday, as employees of Defendants.

45. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code §§ 510 and 1198.

1 46. By virtue of Defendants' unlawful failure to pay additional premium rate
2 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class
3 have suffered, and will continue to suffer, damages in amounts which are presently unknown to
4 them but which exceed the jurisdictional minimum of this Court and which will be ascertained
5 according to proof at trial.

6 47. By failing to keep adequate time records required by Labor Code § 1174(d),
7 Defendants have made it difficult to calculate the full extent of overtime compensation due to
8 Plaintiff and the Class.

9 48. Plaintiff and the Class also request recovery of overtime compensation according to
10 proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as
11 the assessment of any statutory penalties against Defendants, in a sum as provided by the California
12 Labor Code and/or other statutes.

13 49. California Labor Code § 204 requires employers to provide employees with all
14 wages due and payable twice a month. The Wage Orders also provide that every employer shall
15 pay to each employee, on the established payday for the period involved, overtime wages for all
16 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
17 with all compensation due, in violation of California Labor Code § 204.

18 **THIRD CAUSE OF ACTION**

19 **(Against All Defendants for Failure to Provide Meal Periods)**

20 50. Plaintiff incorporates by reference and re-allege as if fully stated herein each and
21 every allegation set forth above.

22 51. Under California law, Defendants have an affirmative obligation to relieve the
23 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
24 start of Plaintiff and the Class's sixth hour of work in a workday, and to take their second meal
25 periods no later than the start of the eleventh hour of work in the workday. California Labor Code
26 § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal
27 periods of at least 30 minutes for each five-hour period worked. It is a violation of California
28

1 Labor Code § 226.7 for an employer to require any employee to work during any meal period
2 mandated under any Wage Order.

3 52. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
4 and the Class with both meal periods as required by California law. By their failure to permit and
5 authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that
6 Defendants made it impossible or impracticable to take these uninterrupted meal periods),
7 Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable
8 Wage Orders.

9 53. Under California law, Plaintiff and the Class are entitled to be paid one hour of
10 additional wages for each workday he or he was not provided with all required meal period(s), plus
11 interest therein.

12 **FOURTH CAUSE OF ACTION**

13 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

14 54. Plaintiff incorporates by reference and re-allege as if fully stated herein each and
15 every allegation set forth above.

16 55. Defendants are required by California law to authorize and permit breaks of 10
17 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
18 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer
19 permit and authorize all employees to take paid rest periods of 10 minutes each for each 4-hour
20 period worked. Thus, for example, if an employee's work time is 6 hours and ten minutes, the
21 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself
22 a violation of California's rest break laws. It is a violation of California Labor Code § 226.7 for
23 an employer to require any employee to work during any rest period mandated under any Wage
24 Order.

25 56. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
26 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a workday.
27 By their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above
28 (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted

rest periods), Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable Wage Orders.

57. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or he was not provided with all required rest break(s), plus interest therein.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

58. Plaintiff incorporates by reference and re-allege as if fully stated herein each and every allegation set forth above.

59. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or his employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) 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 his social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

60. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true “total hours worked by the employee,” and the failure to list the true net wages earned.

61. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiffs and the Class have suffered injury and damage to their statutorily-protected rights.

62. Specifically, Plaintiff and the members of the Class have been injured by

Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

63. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

64. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

65. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

66. Plaintiff incorporates by reference and re-allege as if fully stated herein each and every allegation set forth above.

67. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or his employment, his or his 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 his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.

68. Within the applicable statute of limitations, the employment of Plaintiff and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and

1 continue to fail to pay terminated Class Members, without abatement, all wages required to be paid
2 by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-
3 two (72) hours of their leaving Defendants' employ.

4 69. Defendants' failure to pay Plaintiff and those Class members who are no longer
5 employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-
6 two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§
7 201 and 202.

8 70. California Labor Code § 203 provides that if an employer willfully fails to pay
9 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
10 continue as a penalty wage from the due date, and at the same rate until paid or until an action is
11 commenced; but the wages shall not continue for more than thirty (30) days.

12 71. Plaintiff and the Class are entitled to recover from Defendants their additionally
13 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
14 maximum pursuant to California Labor Code § 203.

15 72. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class
16 are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in
17 this action.

18 **SEVENTH CAUSE OF ACTION**

19 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**
20 ***et seq.*)**

21 73. Plaintiff incorporates by reference and re-allege as if fully stated herein each and
22 every allegation set forth above.

23 74. Defendants, and each of them, are "persons" as defined under California Business
24 & Professions Code § 17201.

25 75. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
26 unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks
27 to enforce important rights affecting the public interest within the meaning of Code of Civil
28 Procedure § 1021.5.

76. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

77. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum and Straight Time Wages

78. Defendants' failure to pay minimum wages, straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

79. Defendants' failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

80. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

81. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Provide Accurate Itemized Wage Statements

82. Defendants' failure to provide accurate itemized wage statements in accordance with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity

prohibited by California Business & Professions Code §§ 17200, *et seq.*

83. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiffs, and all persons similarly situated, and have deprived Plaintiffs, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

84. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

85. Plaintiff, individually, and on behalf of members of the putative Class, are entitled to, and do, seek such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

86. Plaintiff, individually, and on behalf of members of the putative class, are further entitled to and do seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

87. Plaintiff, individually, and on behalf of members of the putative class, have no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, have suffered and will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

88. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

89. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

PRAYER FOR RELIEF

Plaintiffs, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of Action;
2. That Plaintiff be appointed as the representative of the Class and Subclass; and
3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
5. For unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

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As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;

11. For unpaid wages at overtime wage rates as may be appropriate;

12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

20. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

21. For unpaid rest period premium wages as may be appropriate;

22. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

24. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

25. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

26. For all actual damages, according to proof;

27. For statutory penalties pursuant to California Labor Code § 226(e);

28. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

29. For reasonable attorneys' fees and for costs of suit incurred herein; and

30. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

31. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

32. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

33. For pre-judgment interest on any unpaid wages from the date such amounts were due;

34. For reasonable attorneys' fees and for costs of suit incurred herein; and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, and failing to furnish accurate wage statements;

37. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

38. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

39. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

40. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

41. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

42. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: March 22, 2022

WILSHIRE LAW FIRM

By: 

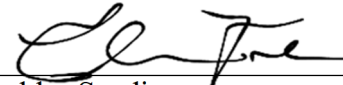
Bobby Saadian
Nicol E. Hajjar
Elizabeth M. Votra
Attorneys for Plaintiff
Eduardo Pena

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: March 22, 2022

WILSHIRE LAW FIRM

By: 

Bobby Saadian
Nicol E. Hajjar
Elizabeth M. Votra
Attorneys for Plaintiff
Eduardo Pena