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ELECTRONICALLY FILED
4/26/2022 11:44 AM
Kern County Superior Court
By Vickie Fogerson, Deputy

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF KERN**
12

13 ROBERTO M. PEREZ, individually, and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 ALLIED POTATO, INC., a California
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.
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CASE NO.: BCV-22-100990

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Provide Required Recovery Periods
4. Failure to Pay Overtime Wages
5. Failure to Pay Minimum Wages
6. Failure to Pay Timely Wages
7. Failure to Pay All Wages Due to Discharged and Quitting Employees
8. Failure to Maintain Required Records
9. Failure to Furnish Accurate Itemized Statements
10. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharged of Duties
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

Roberto M. Perez, on behalf of himself and all others similarly situated ("Plaintiff"), brings this class action against Allied Potato, Inc., ("Allied" or "Defendant"), and DOES 1 through 50, inclusive, (collectively, "Defendants"), to recover monetary damages, injunctive relief, and other remedies, and to hold Defendants accountable for their wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations based on the investigation of his counsel and on information and belief, except as to the allegations pertaining to Plaintiff individually, which is based on his personal knowledge.

1. On information and belief, Defendant earned significant profits in large part due to stealing wages and other compensation from their non-exempt employees, who perform hard manual labor in Defendant's fields. These employees are agricultural workers, many of whom speak little to no English, and who are unaware of their rights under California wage and hour laws. As such, they are highly susceptible to such exploitation.

2. In order to minimize labor costs, Defendant has willfully failed to implement proper policies to comply with California wage and hour laws. For instance, Defendant did not inform their employees of their rights to take meal, rest, or recovery periods as required under California law. As a result, and due in part to other common unlawful policies and practices, Plaintiff and Class members have been systematically denied the ability to take the meal, rest, and recovery periods that they are legally entitled to take.

3. Defendant similarly did not provide information of other rights provided under California law, including the right to be paid minimum and overtime wages, or the right to be reimbursed for employment-related expenses. Plaintiff and Class members were systematically denied proper overtime and minimum wage compensation and did not receive reimbursements for the expenses they incurred in the discharge of their job duties.

4. Moreover, Defendant has implemented practices that conceal the ability of non-exempt employees to discover their unfair and unlawful employment practices. For example, Defendant did not provide employees with notices at the time of hiring, as required under Cal. Lab. Code § 2810.5, which informs employees of the basic employment information, such as who their employer is, their

1 hourly rates of pay, etc. Defendant also did not provide documents to which non-exempt employees
2 are legally entitled under Cal. Lab. Code §§226 and 1198.5, within the timeframes proscribed by these
3 statutes and regulations. The intent and consequence of Defendants' actions is to keep non-exempt
4 employees in the dark about their rights to a fair and safe workplace.

5 5. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
6 himself and a Class of all current and former non-exempt employees of Defendant during the applicable
7 limitations period to compensate these workers for the wages defendants have stolen from them and to
8 protect current and future workers from being subjected to similar wage theft and unlawful working
9 conditions perpetrated by Defendant.

10 **JURISDICTION AND VENUE**

11 6. The Superior Court of the State of California has jurisdiction in this matter because
12 Plaintiff is a resident of California, and Defendant is a California Corporation that is qualified to do
13 business in California and regularly conducts business in California. No federal question is at issue
14 because Plaintiff's claims are based solely on California law.

15 7. Venue is proper in this judicial district and the County of Kern because Plaintiff, and
16 other persons similarly situated, performed work for Defendant in the County of Kern, Defendant runs
17 its business through their corporate headquarters and facilities that are located in Kern County, and
18 Defendant's illegal wage and hour policies and practices, which are the subject of this action were
19 applied to Plaintiff, and other persons similarly situated, in the County of Kern.

20 **PLAINTIFF**

21 8. During the relevant time period, Plaintiff was employed by Defendant as a non-exempt
22 employee. Plaintiff worked on Defendant's fields located in Bakersfield, California.

23 9. Plaintiff, on behalf of himself and all other similarly situated individuals, brings this
24 class action to recover, among other things, wages and penalties from unpaid wages earned and due,
25 including but not limited to, Defendant's failure to provide legally compliant meal and rest breaks and
26 failure to provide proper compensation for missed and otherwise unlawful meal and rest breaks, failure
27 to provide recovery periods, failure to pay all wages earned, including minimum and overtime wages,
28 Defendant's failure to pay all wages due to discharged or quitting non-exempt employees, Defendant's

1 failure to maintain required records; failure to provide accurate itemized wage statements; failure to
2 provide supplemental COVID-19 sick leave and other violations to be discovered.

3 **DEFENDANTS**

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

6 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
7 Plaintiff at this time, and Plaintiff therefore sues such DOE defendants under fictitious names. Upon
8 information and belief, each Defendant designated as a DOE is in some manner highly responsible for
9 the occurrences alleged herein, and Plaintiff and Class members' injuries and damages, as alleged
10 herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of
11 the Court to amend this Complaint to allege the true names and capacities of such DOE defendants
12 when ascertained.

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

16 **CLASS ACTION ALLEGATIONS**

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

19 All current and former non-exempt employees of Defendant who performed work for
20 Defendant in the State of California during the relevant statute of limitations period.

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

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

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

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

- 7 1. Whether Defendant failed to provide non-exempt employees with
8 legally compliant meal periods and rest breaks, and whether Defendant
9 properly paid premium pay as a result of missed and non-compliant
10 meal periods and rest breaks;
- 11 2. Whether Defendant failed to timely pay wages to non-exempt
12 employees in compliance with California law;
- 13 3. Whether Defendant's time rounding policy and practice is in violation
14 of California law;
- 15 4. Whether Defendant failed to pay overtime and minimum wages to non-
16 exempt employees in compliance with California law;
- 17 5. Whether Defendant failed to maintain required records and accurate
18 wage statements for non-exempt employees; and
- 19 6. Whether Defendant engaged in unfair and/or unlawful business
20 practices.

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

24 D. Plaintiff is able to fairly and adequately protect the interests of all members of
25 the proposed Class because it is in his best interests to prosecute the claims alleged herein to obtain
26 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has
27 also retained counsel that is experienced in wage and hour class action litigation.
28

FIRST CAUSE OF ACTION
Failure to Provide Required Meal Periods
[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and § 11 of All
Other Applicable Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

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

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

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

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

20. Despite work conditions that systematically result in missed and non-compliant meal periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of discouraging payment of meal period premium payments. In short, Defendant has violated California Labor Code §§ 226.7, §§ 11 and 12 of all applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for each workday that such a meal period was not authorized or permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, and §§ 11 and 12 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class members for all hours worked during their meal periods.

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

SECOND CAUSE OF ACTION
Failure to Provide Required Rest Breaks
[Cal. Lab. Code §§ 226.7, 512; and § 12 of All Other Applicable
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

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

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

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

25. In addition, the same common policies and practices that deprive Plaintiff and Class members from taking their meal periods, as alleged herein, similarly deprive them of their ability to take their first and second rest breaks. For example, Defendant lacked an adequate policy to provide Plaintiff and Class members with rest breaks, failed to properly inform them of their rights to take rest breaks, and grossly understaffed its facilities such that Plaintiff and Class members were regularly deprived of the ability to take rest breaks.

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

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

THIRD CAUSE OF ACTION

Failure to Provide Required Recovery Periods

[Cal. Lab. Code §§ 226.7; California Code of Regulations, Title 8, Section 3395]
(On Behalf of Plaintiff and the Class against all Defendants)

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

29. At all times relevant herein, as part of Defendant's illegal payroll policies and practices to deprive their non-exempt employees of all wages earned and due, Defendants failed to permit Plaintiff and Class members to take recovery periods as required under Cal. Lab. Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Defendant was and is required to provide recovery or "cooldown" periods to non-exempt employees like Plaintiff and his coworkers, who work outdoors performing manual labor, in order to prevent heat illness.

30. Plaintiff and Class Members work outdoors, Performing intense manual labor on Defendants' fields in the central valley. This work is performed over the course of many hours in temperatures regularly exceeding 80 degrees Fahrenheit, and often up to 100 degrees Fahrenheit.

1 Despite these work conditions, Defendant has failed to implement an adequate policy or practice of
2 providing recovery periods to their non-exempt employees. Defendant has similarly failed to make
3 effort to comply with heat illness prevention regulations by providing places of shade for recovery
4 periods or by supplying sufficient amounts of drinking water. For example, there are times when
5 defendant does not provide Plaintiff and Class members with drinking water during an entire
6 workweek. As with meal and rest breaks, Defendant did not provide Plaintiff and Class members
7 with any written documents informing them of their rights to take recovery periods, and thus they did
8 not take them.

9 31. Defendant further violated Cal. Lab. Code §226.7, and the California Unfair
10 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class
11 members who were not provided with a recovery period, one additional hour of compensation at the
12 proper regular rate of pay for each workday that a recovery period was not provided.

13 32. As a proximate result of the aforementioned violations, Plaintiff and Class members
14 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
15 interest, penalties, expenses and cost of suit.

16 **FOURTH CAUSE OF ACTION**
17 **Failure to Pay Overtime Wages**
18 **[Cal. Lab. Code §§ 510, 1194, 1198; and § 3 of Other Applicable**
19 **Wages Orders And Sections]**
20 ***(On Behalf of Plaintiff and the Class against all Defendants)***

21 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 32.

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

1 35. During the statute of limitations period, Defendant failed to compensate Plaintiff and
2 Class members for all overtime hours worked as required under the foregoing provisions of the
3 California Labor Code and IWC Wage Orders by, among other methods, failing to pay overtime at
4 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
5 510, 1194 and §3 of all applicable wage orders, requiring, permitting or suffering Plaintiff and Class
6 members to work off-the-clock, and to work through meal and rest breaks, but not compensating
7 them for this time, illegally and inaccurately recording time in which Plaintiff and Class members
8 worked, illegally rounding the time worked by Plaintiff and Class members, and other methods to be
9 discovered.

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

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

22 38. Defendant's conduct described herein violates California Labor Code §§ 510, 1194,
23 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§
24 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
25 and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of
26 wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of
27 suit.
28

FIFTH CAUSE OF ACTION
Failure to Pay Minimum Wages
[Cal. Lab. Code §§ 1194, 1197; And § 4 And All Other Applicable
Wages Orders And Sections]
(On Behalf of Plaintiffs and the Class against all Defendants)

39. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 38.

40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of all applicable IWC wage orders and sections, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

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

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

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

5 49. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
6 all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits
7 his or her employment, unless the employee provided seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.

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

14 51. During the statute of limitations period, Defendant has willfully failed to pay accrued
15 wages and other compensation to Plaintiff and Class members in accordance with California Labor
16 Code §§ 201 and 202. Because Defendant has failed and continues to fail to properly compensate
17 Plaintiff and Class members for all hours worked when due, and compensation for non-compliant
18 meal and rest breaks, Defendant has also willfully failed and continues to fail to pay accrued wages
19 and other compensation to Plaintiff and Class members in accordance with California Labor Code §§
20 201 and 202.

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

24 **EIGHTH CAUSE OF ACTION**

25 **Failure to Maintain Required Records**

26 **[Cal. Lab. Code §§ 226, 1174; and § 7 of All Applicable Wage Orders And Sections]**
 (On Behalf of Plaintiff and the Class against all Defendants)

27 53. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 52.

54. During the statute of limitations period, as part of Defendant's illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendant's knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and §7 of all applicable IWC Wage Orders, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; and accurate itemized wage statements.

NINTH CAUSE OF ACTION

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

58. Defendant's pay stubs violate Labor Code § 226 because Defendant routinely and intentionally fails to provide Plaintiff and Class members with proper meal and rest breaks but fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay

1 for each non-compliant meal or rest break. In addition, Defendant required Plaintiff and Class
2 members to work off-the-clock without compensation and illegally rounded the time that they
3 worked, rendering the pay stubs incorrect as to time worked, rates of pay and remuneration. Further,
4 Defendant's wage statement failed to provide for the amounts available and amounts taken relating to
5 COVID-19 sick leave and California supplemental COVID-19 sick leave pursuant to Labor Code
6 §248.2. As a result of these violations, Defendant's pay stubs failed to accurately list the
7 compensation owed and due to Plaintiff and Class members.

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

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

19 **TENTH CAUSE OF ACTION**

20 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**
21 **[Cal. Lab. Code § 2802]**

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

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

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

28 63. During the statute of limitations period, Defendant knowingly and willfully failed to

1 indemnify Plaintiff and Class members for all business expenses and/or losses incurred in direct
2 consequence of the discharge of their duties while working under the direction of Defendant,
3 including but not limited to, cellular phone usage, safety equipment and other protective equipment,
4 in violation of California Labor Code § 2802.

5
6 64. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
7 Class members have been damaged in an amount according to proof at trial, and seek reimbursement
8 of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).
9 Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an
10 award of costs, expenses, and reasonable attorneys' fees, including those provided in California
11 Labor Code § 2802(c), as well as other available remedies.

12
13 **ELEVENTH CAUSE OF ACTION**
14 **Unfair and Unlawful Business Practices**
15 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**
16 ***(On Behalf of Plaintiff and the Class against all Defendants)***

17
18 65. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 64.

20
21 66. Each and every one of Defendant's acts and omissions in violation of the California
22 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to,
23 Defendants failure to provide required meal and rest breaks, failure to provide recovery periods,
24 unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or
25 quitting employees or to pay timely wages, failure to furnish accurate itemized wage statements or to
26 maintain required records, and failure indemnify Plaintiff and Class members for necessary
27 expenditures and/or losses incurred in discharging their duties, constitute an unfair and unlawful
28 business practice under California Business and Professions Code § 17200 *et seq.*

67. Defendant's violations of California wage and hour laws constitute a business practice
because the aforementioned acts and omissions were done repeatedly over a significant period of
time, and in a systematic manner, to the detriment of Plaintiff and Class members.

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

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

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

15 **TWELFTH CAUSE OF ACTION**
16 **Representative Action for Civil Penalties**
17 **[Cal. Lab. Code §§ 2698- 2699.5]**

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

19 71. Plaintiff incorporates herein by specific reference as though fully set forth the
20 allegations in paragraphs 1 through 70, with exception of the allegations in Paragraphs 13 through 15
(A) – (D).

21 72. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
22 2699(c) and is a proper representative to bring a civil action on behalf of himself, and other non-
23 exempt employees of Defendant who are California citizens, pursuant to the procedures specified in
24 California Labor Code § 2699.3, because Plaintiff was employed by Defendant and the alleged
25 violations of the California Labor Code were committed against Plaintiff, including but not limited
26 to, failure to provide supplemental COVID-19 sick leave, suitable resting facilities pursuant to §13 of
27 all applicable IWC Wage Orders and suitable seating according to pursuant to §14 of all applicable
28 IWC Wage Orders.

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

74. Pursuant to California Labor Code §§ 2699.3, on February 16, 2022, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

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

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendant;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendant from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;

- 1 6. For waiting time penalties pursuant to California Labor Code § 203;
- 2 7. For statutory penalties according to proof, including but not limited to all penalties
- 3 authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 1174.5, 1775, and 1197.1;
- 4 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
- 5 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
- 6 9. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor
- 7 Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable
- 8 provision providing for pre-judgment interest;
- 9 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,
- 10 226, 1194, and California Code of Civil Procedure § 1021.5, California Civil Code § 1786.50(a)(2),
- 11 California Civil Code § 1785.31(a), and/or any other applicable provisions providing for attorneys'
- 12 fees and costs;
- 13 11. For declaratory relief;
- 14 12. For an order requiring and certifying the First through Tenth Causes of Action as a
- 15 class action;
- 16 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
- 17 Class counsel; and
- 18 14. For such further relief that the Court may deem just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial

21 with respect to all issues triable of right by jury.

22 DATED: April 25, 2022

23 THE LAW OFFICE OF SCOTT ERNEST WHEELER

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25 SCOTT ERNEST WHEELER

26 *Attorney for Plaintiff and the Putative Class*

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