

EMILIO LAW GROUP, APC
LAURIE M. CORTEZ, SBN 289902
lauriecortez@emiliolaw.com
JUSTIN G. SCHMIDT, SBN 248872
justinschmidt@emiliolaw.com
12832 Valley View Street, Suite 106
Garden Grove, California 92845
Telephone: (714) 379-6239
Fax: (714) 379-5444

Attorney for Plaintiff
JAMES MARTINEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

JAMES MARTINEZ, an individual and on
behalf of others similarly situated,

Plaintiff,

vs.

WAVEPOINTE, INC, a California
Corporation, CONVERGINT
TECHNOLOGIES, LLC, a Delaware
Corporation doing business in California;
JESSE ROSALES, an individual, NATHAN
ROSALES, an individual, LOUIS
CALDERON, an individual, and DOES 1 to
50 inclusive;

Defendant.

Case No. : 30-2022-01244959-CU-WT-NJC
Date Filed: February 15, 2022
Judge: Hon. Craig Griffin
Dept: N17

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

1. UNPAID WAGES, MINIMUM AND OVERTIME WAGES (CALIFORNIA CODE OF REGULATIONS §11040, LABOR CODES § 1194 AND § 203)
2. VIOLATION OF CALIFORNIA LABOR CODE § 226
3. FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §226.7, 512, IWC WAGE ORDER 5)
4. FAILURE TO PROVIDE REST PERIODS (LABOR CODE § 226.7, IWC WAGE ORDER 5)
5. FAILURE TO REIMBURSE EMPLOYEE FOR BUSINESS EXPENSES (LABOR CODE § 2802)
6. UNLAWFUL DEDUCTIONS FROM WAGES (LABOR CODE §221)
7. FAILURE TO PAY UPON TERMINATION OR QUITTING EMPLOYEE (Cal. Labor Code §§ 201, 202, 203);
8. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200
9. FAILURE TO MAINTAIN BUSINESS RECORDS (LABOR CODE § 1174.5)
10. FAILURE TO TIMELY PROVIDE A COPY OF PAYROLL RECORDS
11. PRIVATE ATTORNEY GENERAL ACT (PAGA), (Labor Code §2699 et. seq.)
12. RETALIATION (LABOR CODE §98.6)
13. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

Plaintiff JAMES MARTINEZ alleges that:

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRELIMINARY ALLEGATIONS

1. Defendant WAVEPOINTE, INC. (hereafter “WAVEPOINT” or “DEFENDANT”) is, and at all times relevant herein was, a California corporation, doing business in the County of Orange, State of California.

2. Defendant JESSE ROSALES (hereafter “JESSE ROSALES” or “DEFENDANT”) is, and at all times relevant herein was, an individual residing in the County of Orange, State of California.

3. Defendant NATHAN ROSALES (hereafter “NATHAN ROSALES” or “DEFENDANT”) is, and at all times relevant herein was, an individual residing in the County of Orange, State of California.

4. Defendant CONVERGINT TECHNOLOGIES, LLC is a Delaware Corporation, authorized to do business in California. While its principal address is in Schaumburg, Illinois, it was doing business in the County of Orange, State of California.

5. Defendant LOUIS CALDERON is, and all relevant times herein was, an individual residing in the County of Orange, State of California.

6. Plaintiff JAMES MARTINEZ (hereafter “PLAINTIFF” or “MARTINEZ”) at all times relevant hereto was a resident of Orange County, State of California.

7. Plaintiff is informed and believes, and thereon alleges, that at all times herein relevant, each defendant was the agent, employee and/or partner of each of the defendants herein, and was acting within the course and scope of said agency, employment and/or partnership and pursuant to the purposes of said agency.

8. Defendants and each of them were the joint employers of Plaintiffs. Plaintiffs are informed and believe, and thereon allege that there exists, and at all times relevant to this complaint, there existed a unity of interest and ownership between the defendants and each of them, such that any individuality and separateness between said individual defendants have ceased, and that the defendants are the alter ego of each other. Plaintiffs are further informed and believe and thereupon allege that if the acts of the defendants’ entities are treated as those of the entity alone, an inequitable result would follow. It is fair and equitable to permit piercing the corporate veil as to each of the defendants.

9. Plaintiff is informed, believes, and thereon alleges that Defendant Jesse Rosales is the

1 partial owner, director and Chief Operations Officer of Wavepointe, Inc., and that Defendant Nathan
2 Rosales is the partial owner, Vice President, director, and Chief Financial Officer of Wavepointe, Inc.
3 Inc. Throughout his employment, Jesse Rosales and Nathan Rosales controlled Plaintiff's wages, hours
4 and working conditions. Further, Jesse Rosales and Nathan Rosales engaged, suffered, and permitted
5 Plaintiff to work for them and their company, Wavepointe, Inc.

6 10. Labor Code 558.1 provides that any employer or other person acting on behalf of an
7 employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and
8 days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
9 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
10 Defendants, and each of them, are an employer and/or other person acting on behalf of an employer
11 pursuant to Labor Code §558.1.

12 11. California Labor Code § 2810.3 states that "A client employer shall share with a labor
13 contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor
14 for...the payment of wages." California Labor Code Section 2810.3(a)(1)(A) defines a "client
15 employer" as a business entity, regardless of form, that obtains or is provided workers to perform labor
16 within its usual course of business from a labor contractor.

17 12. In compliance with Labor Code §2810.3(d) on February 14, 2022, Plaintiff, through his
18 counsel, sent a certified letter to Defendants notifying them of their violations under this section. More
19 than 30 has passed since Defendants were notified of the violations of Labor Code §2810.3.
20 Defendants Convergent Technologies, served as labor contractors under § 2810.3 by providing workers
21 to provide wiring installation services, which is part of the usual course of business for Defendants
22 Convergent Technologies.

23 13. Upon information and belief, Defendant Convergent Technologies, LLC, and Louis
24 Calderon were also client employers within the definition of Labor Code § 2810.3. Defendants
25 Wavepointe, Inc., Jesse Rosales, and Nathan Rosales served as labor contractors under § 2810.3 by
26 providing workers to provide wiring installation services, which is part of the usual course of business
27 for Defendants Convergent Technologies and Calderon. Upon information and belief, Defendants
28 Convergent and Calderon were client employers within the definition of Labor Code § 2810.3 and share

1 with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that
2 labor contractor for the payment of wages.

3 14. Plaintiff Martinez has been employed by Wavepointe, Inc. and its owners and alter-egos,
4 Jesse Rosales, and Nathan Rosales, within the past six years. Plaintiff Martinez has been jointly
5 employed by Convergent Technologies, LLC and Louis Calderon for the past two years. Convergent
6 Technologies, LLC and Louis Calderon are also a client employer of Wavepointe, Inc.'s workers.

7 15. Venue is proper in this judicial district because the conduct alleged in this Complaint
8 occurred in this judicial district.

9 **BACKGROUND FACTS**

10 16. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
11 through 11, inclusive, as though fully set forth herein.

12 17. On or around 2015, Plaintiff James D. Martinez was hired by Defendants Wavepointe,
13 Inc., Nathan Rosales, and Jesse Rosales as a wiring installer/ low-voltage technician.

14 18. Throughout his employment, Plaintiff was required to work significant hours "off the
15 clock" and he was not paid for the actual hours he was working. Plaintiff was not paid minimum or his
16 regular wages for these hours.

17 19. Plaintiff was told shortly after hire by Jesse Rosales that the company did not pay its
18 employees overtime pay because they couldn't afford it, and that any overtime Plaintiff worked would
19 be paid at his regular rate of pay. Thus, Plaintiff worked significant hours where he was not paid
20 overtime premiums for his wages. However, in or around late 2018, Defendant informed Plaintiff that
21 because of some legal situation with another employee, he would have to start paying plaintiff his
22 overtime wages, thus Plaintiff began to receive overtime pay for a limited period from late 2018 – fall,
23 2019 however only if it was "approved in advance" by the owners. Thus, although Plaintiff started
24 receiving some overtime pay, it was still not for the actual amount of hours he was working because the
25 company would tell him that many of his hours worked were not "approved" and thus would not be
26 paid.

27 20. Throughout his employment, Plaintiff typically worked 5-6 days per week, and worked
28 anywhere from 40-62 hours per week. Plaintiff initially was told to track his own hours and just submit

1 a total, but later, Plaintiff told to start preparing handwritten time sheets of the time he spent on the job
2 sites.

3 21. Plaintiff was provided with a written policy document for certain jobs which stated that
4 Plaintiff was required to arrive to each job earlier than the promised ETA for the customer. The
5 Company's policy stated that if Plaintiff arrived later than the promised ETA, "A 5% deduction penalty
6 will be applied for late arrival to service jobs, unless client penalty is greater. A \$100 deduction penalty
7 will be applied for each late arrival occurrence on project work, unless client penalty is greater"

8 22. When Plaintiff looked at his paychecks, Plaintiff noticed that a significant amount of his
9 pay was being deducted for various items including "FUTA", and "ER" which were over and above the
10 standard wage deductions. When Plaintiff asked Jesse and Nathan Rosales about these deductions, he
11 was told that the company had gotten in trouble on taxes and that they were getting penalized by the
12 government and thus all of the employees had to pay these additional costs out of their paycheck. After
13 research, Plaintiff informed Defendants that they were not allowed to take such government penalties for
14 the company out of his pay, but Defendants refused to correct it, or reimburse him the illegal deductions
15 that they were taking out of his paychecks. Plaintiff was also given handwritten papers showing other
16 deductions taken from his pay for other penalties that plaintiff supposedly incurred working for the
17 company.

18 23. In or around late, 2019, Defendant Jesse Rosales told Plaintiff that he was not allowed to
19 record his overtime hours worked on his time sheet anymore because he would not be paid for those
20 hours even when he worked them. Thus, in or around early 2019, Plaintiff stopped submitting time
21 sheets with the overtime hours he worked (even though he was still working them) and instead only
22 submitted hours totaling a maximum of 40 hours per week, despite the fact that he was actually working
23 far more.

24 24. Plaintiff was required to use his own vehicle to travel daily to different customer job sites
25 all over Southern California. However, when Plaintiff asked about vehicle usage or mileage
26 reimbursement, he was told that the company only provides mileage reimbursement if his customer
27 location exceeded 50 miles each direction from Defendant's "home" location , of their office or house.
28 Thus, for the majority of Plaintiff's daily trips to customer job-sites, Plaintiff was never reimbursed for

1 the costs of his vehicle or gas usage.

2 25. Plaintiff was also told at certain points during his employment that drive time was not
3 considered "work time", and thus he was not paid his hourly wages for the time he would spend driving
4 to customer locations, or driving to the supply warehouses or stores to pick up materials needed for the
5 job. When Plaintiff complained about this in or around 2019, the company informed him that he would
6 be paid for travel time but at approximately ½ of his regular rate of pay, thus he was still underpaid for
7 the hours he spent traveling to customer locations or picking up materials for the job.

8 26. Further, Plaintiff was told that he had to be available the night before each job to receive
9 and respond to calls and messages about what customer site he needed to go to the next day however he
10 was not paid for the time he spent responding to calls and messages each evening about the next day's
11 jobs.

12 27. Plaintiff was also required to use his personal cell phone to take and receive these calls
13 and messages and to communicate with his employers throughout his work day. However, Plaintiff was
14 told that the company would not provide him for reimbursement for his cell phone usage.

15 28. Plaintiff was also informed by Defendants that in-order to perform his duties, he was
16 required to purchase tools and equipment items which he would not be reimbursed for. The items
17 Plaintiff was required to purchase, and did purchase for his employment with Defendants was various
18 handtools for electrical wiring such as wiring crimpers, punch-down tools, cable strippers and cutters,
19 cable testers, label makers, gopher poles and fish tape, safety equipment, and drywall cutters. Plaintiff
20 purchased and used these items throughout his employment but was not provided reimbursement for any
21 of the necessary business tools.

22 29. Plaintiff was also informed by the company that he would need to purchase and advance
23 the costs of the materials needed for each day's job. Plaintiff was told that he would need to purchase
24 items such as electrical wiring, coaxial and ethernet cables, ethernet plugs, terminable blocks, electrical
25 boxes and covers, and he could submit them for reimbursement when the jobs were done. Thus,
26 Plaintiff was regularly required to advance his own money to the company's vendors, or place client
27 purchases on his personal credit-card to pay for client's materials for each job, and would have to wait
28 days, and even weeks for the company to reimburse him for the materials needed for each job.

1 30. Further, Plaintiff was not allowed an opportunity to take his lunch and rest breaks each
2 day. Plaintiff was told that when he was on a customer job site, he was required to keep working until
3 the job was done and then he would be able to rest after the job was over. Jesse Rosales emphasized on
4 countless occasions that it was important that Plaintiff always keep moving and never stop when on a
5 job site, because other workers, painters, and installation companies would be waiting to come in after
6 Plaintiff was finished running wires, and they could not start their work until after Plaintiff had finished.
7 Plaintiff complained numerous times that he was not getting any breaks and he was not allowed to take
8 his lunches while on the job sites to Jesse Rosales and Nathan Rosales, but he was told that if he didn't
9 like it, he should just quit.

10 31. In or around early 2020, Plaintiff was informed that Wavepointe, Inc. was partnering with
11 Convergent Technologies, LLC and that most of Plaintiff's work would now be performed on behalf of
12 Convergent as a "subcontractor". From that point forward, Plaintiff was directly supervised by
13 Convergent managers including Louis Calderon, who was the "Global Operations Supervisor" and Jim
14 Maloney, who was a company executive. Convergent managers, including Louis Calderon and Jim
15 Maloney would direct and control Plaintiff's daily work activities, and indicated that they had the power
16 to punish Plaintiff including issue his termination.

17 32. After beginning to work with Convergent, Plaintiff still continued to receive his
18 paychecks from Wavepointe, Inc. and received some instructions from Nathan and Jesse Rosales but
19 was told that most of his day-to-day directions would be coming from his Convergent supervisors.
20 Plaintiff began to notice and hear things at the job site that were illegal and reported them to Nathan and
21 Jesse Rosales. For instance, Plaintiff overheard his supervisor, Louis Calderon from Convergent, tell the
22 other Defendants, Nathan and Jesse Rosales, that they were required to pay him personal "kickbacks" of
23 a percentage of each job assignment they got from Convergent. Jesse Rosales told Plaintiff that this was
24 just part of the job. When Plaintiff noted that he didn't think that the company was properly licensed or
25 allowed to do some the work or government worksite assignments that Convergent was giving them,
26 Jesse and Nathan Rosales told him it was fine because they would "borrow" a friend, Cali Rosalez'
27 license to do the work even though he was not involved in the projects. When Plaintiff noted that they
28 were working on Government owned or controlled properties, such as City Hall and the UCI campus,

1 and thus should be getting Prevailing Wages, He was told by Defendants that the company had found a
2 “work-around” since they weren’t authorized to do such work, and wouldn’t report the work to the
3 government and thus wouldn’t pay the prevailing wage rates.

4 33. When Plaintiff got sick from COVID-19, and was forced to take time off work, Plaintiff
5 was informed that although he had sick pay available, he was not allowed to use his sick-leave and that
6 he should just apply to the EDD for worker’s comp payments, but that his sick-pay would not be
7 provided.

8 34. Each time plaintiff reported these concerns about the activities of the companies and its
9 employees, or the things that were going on, his complaints were dismissed or ignored, and he was told
10 that he must work harder and faster if he wanted to continue to be employed.

11 35. Plaintiff also continued complaining about the various violations of the labor codes that
12 he was suffering, including his unpaid wages and overtime, missed meal and rest periods, the large
13 expense of materials and equipment that he was having to purchase or advance for each job, the
14 expenses he was incurring in vehicle gas, credit-card fees and delays in getting reimbursed his money
15 for the materials. He was told by Nathan Rosales that the company could start advancing him money to
16 provide for the cost of the materials purchases, and the company would be willing to pay ½ the cost of
17 some approved tools, but that all of the other issues were not going to be addressed.

18 36. However, Plaintiff continued to complain about the improper wages, unpaid overtime,
19 and his denied meal and rest periods, and thus Plaintiff believed that Defendants were looking for any
20 opportunity or excuse to fire him in retaliation for his complaints.

21 37. In September, 2021, Plaintiff informed his supervisors, Louis Calderon and Jim Maloney
22 that he temporarily needed to pick up his daughter from school in the afternoons and that he would need
23 to either leave work early or take a lunch break at those times to get his daughter. Louis Calderon
24 approved his request to be able to pick up his daughter in the afternoons and was told that he could just
25 start early, and work through his lunches, and as long as he finished his work before the pick-up time, he
26 could just leave when it was time to pick up his daughter.

27 38. On or around September 21st, Defendant Jesse Rosales sent Plaintiff a text late at night
28 saying he needed Plaintiff’s receipts for the materials he purchased, for which money had been advanced

1 earlier that day. Plaintiff responded that he was currently at a football game but would send it later. A
2 few hours later, Jesse Rosales texted other employees that Plaintiff was having his job taken away for
3 not responding to the call immediately when Jesse had made it that night.

4 39. Although Plaintiff provided the receipts for the materials purchase, and provided the
5 extra funds from the advancement over the next few days, Defendants informed Plaintiff that he was
6 “under investigation” for stealing the funds for the materials, and for falsifying his time cards because he
7 had left early to pick up his daughter the past two weeks. While plaintiff was able to show that both
8 allegations were entirely false, and that Mr. Louis Calderon had approved his early leave on those
9 occasions, on or about September 24, 2021, Defendants informed Plaintiff that he was being terminated.
10 Plaintiff was informed that Louis Calderon from Convergint and Jesse Rosales from Wavepointe were
11 the two people who made the termination decision.

12 40. Plaintiff is informed, believes and alleges that the true reason for his termination was
13 because of Plaintiff’s complaints about the unlawful activities happening at the companies, and his
14 complaints about the labor code violations he and other employees were experiencing.

15
16 **FIRST CAUSE OF ACTION**
17 **UNPAID WAGES, MINIMUM AND OVERTIME WAGES**
18 **(LABOR CODE §1194 AND § 203,**
CALIFORNIA CODE OF REGULATION §11040)
(as to All Defendants)

19 41. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
20 through 37, inclusive, as though fully set forth herein.

21 42. At all times herein mentioned, California Labor Codes § 1194 and § 203, and California
22 Code of Regulations §11040 were in full force and effect and binding upon Defendant and each of them.
23 These statutes and wage orders required Defendants to pay to Plaintiff for all hours worked, the required
24 minimum wages, as well as one-and-one-half times his regular rate of pay for each hour of work
25 performed in excess of eight (8) hours in one workday and/or forty (40) hours in one workweek. Said
26 statutes and wage orders further required Defendants to pay to Plaintiff two times his regular rate of pay
27 for each hour of work performed in excess of twelve (12) hours per workday.

28 43. As described above, Defendant has refused or failed to properly compensate Plaintiff
for work all hours worked, for all minimum wages due and for hours in excess of forty (40) hours of

1 work per week and/or eight (8) hours per day in violation of law.

2 44. During the course of Plaintiff's employment, Plaintiff worked approximately 40-62
3 hours per week and did not receive proper compensation, minimum and overtime wages for all hours
4 worked.

5 45. Under Labor Code Section 1194(a), notwithstanding any agreement to work for a lesser
6 wage, Plaintiff was entitled to pay of the legal minimum wage and compensation for all hours he
7 worked. Under Labor Code §1194.2, Plaintiff is entitled to recover liquidated damages in an amount
8 equal to the wage unlawfully unpaid and interest thereon for the unpaid wages.

9 46. Pursuant to Labor Codes §1194 and § 203 Plaintiffs are seeking an award for unpaid
10 overtime wages according to proof, interest and penalties thereon, and reasonable attorney fees and costs
11 incurred in this action.

12 **SECOND CAUSE OF ACTION**
13 **VIOLATION OF CALIFORNIA LABOR CODE § 226 and 226.3**
14 **(as to All Defendants)**

15 47. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
16 through 43, inclusive, as though fully set forth herein.

17 48. Pursuant to California Labor Code §226, employers are required to, "furnish each of his
18 or her employees, either as a detachable part of the check, draft, or voucher paying the employee's
19 wages, or separately when wages are paid by personal check or cash, an itemized statement in writing."
20 Furthermore, employers are required to give employees an itemized statement including, but not limited
21 to, the employees name and social security number, gross wages, total hours worked, net wages earned,
22 the inclusive dates of the period for which the employee is paid, as well as applicable hourly rates.

23 49. Plaintiff is informed, believes, and thereon alleges that Defendant intentionally violated
24 California Labor Code §226 by furnishing him with wage statements that were incorrect and false; and
25 not actually showing the proper amount of wages, hours worked, and overtime pay, with the intention of
26 denying Plaintiff's rights under the Labor Code concerning wages.

27 50. Plaintiff and each other similarly situated employees have been injured by, among other
28 things, not being paid all wages due, not knowing how many hours he or she worked and at what rate(s),
and being required to file this action to recover their wages and determine the amount of hours worked

1 and wages due.

2 51. Plaintiff is informed, believes, and thereon alleges that pursuant to California Labor Code
3 §226, he is entitled to “recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
4 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
5 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall
6 be entitled to an award of costs and reasonable attorney’s fees” from Defendants.

7 52. Pursuant to Labor Code §226.3, and §2699, Plaintiffs and other similarly situated
8 employees are also entitled to civil penalties as provided. Pursuant to Labor Code §2699, Plaintiffs as
9 well as other similarly situated employees are also entitled to civil penalties as provided.

10
11 **THIRD CAUSE OF ACTION**
12 **FAILURE TO PROVIDE MEAL PERIODS**
13 **(LABOR CODE §226.7, 512, AND IWC WAGE ORDERS)**
14 **(as to All Defendants)**

15 53. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
16 through 49, inclusive, as though fully set forth herein.

17 54. Labor Code §512 and IWC Wage Orders generally require an employer to provide a meal
18 period of not less than 30 minutes for employees who work a period of more than five hours per day,
19 and a second meal period of not less than 30 minutes for employees who work more than 10 hours per
20 day.

21 55. Defendant violated Labor Code §512 and IWC Wage Orders by failing to provide
22 Plaintiff the requisite 30-minute meal periods required by law.

23 56. Pursuant to IWC Wage Orders and Labor Code §226.7, Defendant is required to pay
24 Plaintiff one hour of pay at his regular rate of compensation for each workday that the meal period was
25 not provided. This compensation is owed and unpaid.

26 **FOURTH CAUSE OF ACTION**
27 **COMPENSATION FOR REQUIRED REST PERIODS NOT PROVIDED**
28 **(LABOR CODE §226.7, IWC WAGE ORDERS)**
(As to All Defendants)

57. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
through 53, inclusive, as though fully set forth herein.

1 58. Pursuant to IWC Wage Orders, Defendant are required to authorize and permit
2 employees such as Plaintiff to take rest periods, based upon the total hours worked at a rate of ten (10)
3 minutes net rest per four (4) hours or major fraction thereof, with no deduction from wages.

4 59. Defendant failed and refused to authorize and permit Plaintiff to take 10-minute rest
5 periods for every four hours worked or major fraction thereof, in violation of IWC Wage Orders.

6 60. Defendant further violated IWC Wage Orders and Labor Code §226.7, by failing to pay
7 Plaintiff one hour of pay at their regular rate of pay for each rest period which was not provided. This
8 compensation is owed and unpaid.

9
10 **FIFTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE PLAINTIFF FOR**
12 **BUSINESS EXPENSES (LABOR CODE § 2802)**
13 **(As to All Defendants)**

14 61. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
15 through 57, inclusive, as though fully set forth herein.

16 62. Pursuant to California Labor Code § 2802, employers are required to reimburse
17 employees for necessary business expenses.

18 63. As stated above, Plaintiff was required to have certain tools and equipment in order to
19 perform his duties for Defendant including usage of his personal vehicle and gas to get to and from
20 customer jobsites and supply warehouses and stores, use of his personal cell phone to communicate with
21 Defendants, and equipment to perform his cable installation jobs. Further Plaintiff was required to pay
22 for the materials for the job by advancing his own personal money to the vendors, and then waiting for
23 the company to provide him a reimbursement at some future time. This caused Plaintiff to be denied
24 access to his personal money and incur banking and credit-card fees on countless occasions.
25 Throughout his employment, Defendant failed and refused to compensate or reimburse Plaintiff for the
26 use of his vehicle and cell phone and cost of tools and equipment required to perform Plaintiff's job
27 duties or pay for their own client's materials for the jobs.

28 64. Additionally, Defendant often wrongfully withheld wages for purported fees, client fines,
and government expenses that were not permitted on plaintiff's paycheck.

 65. Plaintiff was not reimbursed for his personal expenses to complete his job duties in the

1 course of his employment and therefore seeks his reasonable expenses, plus costs and attorney's fees.

2 **SIXTH CAUSE OF ACTION**
3 **UNLAWFUL DEDUCTIONS FROM WAGES (LABOR CODE §221)**
4 **(As to All Defendants)**

5 66. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
6 through 62, inclusive, as though fully set forth herein.

7 67. Pursuant to California Labor Code §221, employers are prohibited from collecting or
8 receiving any part of an employee's wages which are paid to the employee.

9 68. As stated above, Plaintiff was provided with a written policy document for certain jobs
10 which stated that Plaintiff would receive a 5% deduction penalty or a \$100 deduction penalty from his
11 pay for a late arrival at a job, which Plaintiff is informed, believes and thereon alleges was taken from
12 his pay on numerous occasions.

13 69. Further, Defendants improperly deducted their company taxes and business expenses
14 from Plaintiff's wages under the titles "FUTA" and "ER" which were over and above the standard wage
15 deductions and not permitted by any law. Plaintiff was also given handwritten papers showing other
16 deductions taken from his pay for other penalties that plaintiff supposedly incurred working for the
17 company.

18 70. Plaintiff is entitled to recover the unpaid wages form the unlawful deduction along with
19 waiting time penalties for the unlawfully deducted wages. Further, Plaintiff seeks his reasonable
20 expenses, plus costs and attorney's fees.

21 **SEVENTH CAUSE OF ACTION**
22 **FAILURE TO PAY UPON TERMINATION OR QUITTING EMPLOYEE**
23 **(Cal. Labor Code §§ 201, 202, 203)**
24 **(As to All Defendants)**

25 68. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
26 paragraphs 1 through 67, inclusive, as though fully set forth herein.

27 69. At all times herein mentioned, California Labor Code §§ 201, 202, and 203 were in full
28 force and effect and binding on Defendants. Said sections require an employer to pay all unpaid and
earned wages to an employee immediately upon discharge.

1 70. Plaintiff is informed and believes, and thereon alleges, that Defendants refused and/or
2 willfully failed to pay all wages owed to Plaintiff at the time of separation of employment.

3 71. As a result of Defendants' violation of California Labor Code §§ 201, 202 and 203,
4 Plaintiff is entitled to penalties under California Labor Code § 203, which provides that upon violation
5 of California Labor Code § 201, "the wages of the employee shall continue as a penalty from the due
6 date thereof at the same rate until paid or until an action is commenced; but such wages shall not
7 continue for more than 30 days."

8 **EIGHTH CAUSE OF ACTION**
9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200**
10 **(As to All Defendants)**

11 72. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
12 through 71, inclusive, as though fully set forth herein.

13 73. Defendants' failure to pay overtime to Plaintiff in violation of California Law Wage
14 Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of California
15 Business and Professions Code §17200, et seq.

16 74. Pursuant to Business and Professions Code §17203, plaintiff is entitled to restitution of
17 the unpaid overtime amounts.

18 **NINTH CAUSE OF ACTION**
19 **FAILURE TO MAINTAIN BUSINESS RECORDS**
20 **(LABOR CODE § 1174.5)**
21 **(As to All Defendants)**

22 75. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
23 through 74, inclusive, as though fully set forth herein.

24 76. Plaintiff is informed and believes, and thereon alleges that Defendant failed to keep
25 accurate business records that employers are required to maintain, including time and meal period
26 records for each employee.

27 77. Pursuant to Cal. Labor Code § 1174.5 failure to maintain business records shall subject
28 employer to a civil penalty of five hundred dollars (\$500).

TENTH CAUSE OF ACTION
 FAILURE TO TIMELY PROVIDE A COPY OF PAYROLL RECORDS
 (LABOR CODE §2699)
 (As to All Defendants)

1 78. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
2 through 77, inclusive, as though fully set forth herein.

3 79. California Labor Code Section 1198.5 requires an employer to produce an employee's
4 personnel file within 30 days of the request. Labor Code §432 requires an employer provide a copy of
5 any instrument signed by the Employee upon request. Finally, Labor Code §226(c) requires an
6 employer to permit a current or former employee to inspect or receive a copy of records including
7 itemized wage statements within 21 days of receiving the request.

8 80. On October 19, 2021, Plaintiff, through his counsel, made a request in writing and via
9 certified US Mail, that Defendants provide Plaintiff with a copy of certain documents in his personnel
10 file, all documents signed by him, as well as his time and payroll records, including the itemized wage
11 statements. Defendants failed to timely furnish Plaintiff with a copy of his full employee file and payroll
12 and time records in violation of Labor Code §432, 226(b), (c) and (f), Labor Code 1198.5, IWC Orders 1
13 through 15, Section 7, and IWC Order 16 Section 6, despite multiple requests to do so. Plaintiff is
14 entitled to recover any and all penalties and compensation provided by the Labor Code, including the
15 above mentioned sections and section 558.1, for Defendant's failure to furnish the requested personnel
16 and payroll and time records, including at least \$750.00 in penalties pursuant to Labor Code §§226(f),
17 1198.5, and 558.1, plus attorneys' fees and costs.

18
19 **ELEVENTH CAUSE OF ACTION**
20 **PRIVATE ATTORNEY GENERAL ACT PENALTIES**
21 **(LABOR CODE §2699)**
22 **(As to All Defendants)**

23 78. Plaintiff refers to, and incorporates herein by reference, the allegations of paragraphs 1
24 through 37, inclusive, as though fully set forth herein.

25 79. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
26 aggrieved employee, on behalf of himself or herself and other current or former employees, may recover
27 penalties under any provision of the Labor Code that provides for civil penalties. These penalties are in
28 addition to any other relief available under the Labor Code.

 80. As set forth above, Defendants have committed numerous violations for which the Labor
Code provides for penalties, including violations of §§201, 202, 203, 226, 226.3, 226.7, 510, 512, 1174,

1 and 1194.

2 81. Plaintiff has complied with the PAGA notice provision set forth in Cal. Labor Code
3 §2699.3(a)(1) by providing written notice by certified mail to the Labor and Workforce Development
4 Agency (“LWDA”) and to Defendants of the legal claims and theories of this case prior to the filing of
5 this first amended complaint. Plaintiff is entitled to commence this action because the LWDA notified
6 Plaintiff June 26, 2014, that it did not intend to investigate the allegations set forth.

7 82. As a direct result of Defendants’ conduct as described, Plaintiff is entitled to recover the
8 maximum civil penalties permitted by the Private Attorneys General Act as provided under Labor Code
9 §2699(f), and from Defendants for all violations of Labor Code §§201, 202, 203, 226, 226.3, 226.7, 510,
10 512, 1174, and 1194, in amounts to be proven at trial, as well as reasonable attorney’s fees and costs.

11 **TWELFTH CAUSE OF ACTION**
12 **RETALIATION FOR DISCLOSING VIOLATIONS OF LAW**
13 **(LABOR CODE §§1102.5, 1102.6, 98.6)**
14 **(As to All Defendants)**

15 78. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
16 paragraphs 1 through 77, inclusive, as though fully set forth herein.

17 79. At all times hereto, Labor Code §1102.5 was in full force and effect, and was binding
18 upon Defendants. These laws prohibit an employer, or any person acting on behalf of the employer,
19 from adopting, or enforcing any rule, regulation or policy preventing an employee from disclosing
20 information to a government or law enforcement agency, to a person with authority over the employee,
21 or to another employee who has authority to investigate, discovery or correct the violation or
22 noncompliance, or from providing information to, or testifying before, any public body conducting an
23 investigation, hearing or inquiry, if the employee has reasonable cause to believe that the information
24 discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state or
25 federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job
26 duties.

27 80. Further, Labor Code §1102.5 also prohibits an employer, or any person acting on behalf
28 of the employer, from retaliating against an employee for disclosing information, or because the
employer believes that the employee disclosed or may disclose information, to a government or law

1 enforcement agency, to a person with authority over the employee or another employee who has the
2 authority to investigate, discover, or correct the violation or noncompliant, or for providing information
3 to, or testifying before, any public body conducting an investigation, hearing or inquiry if, the employee
4 has reasonable cause to believe that the information discloses a violation of state or federal statute, or a
5 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether
6 disclosing information is part of the employee's job duties.

7 71. Throughout his employment, plaintiff complained to Defendants' owners and officers
8 that Defendants practices were violating the law. Plaintiff complained regarding the labor code
9 violations described above, and he also complained about illegal deductions taken from his pay, that
10 Louis Calderon had said that Defendants Jesse and Nathan Rosales were paying him "kickbacks" in
11 order to get jobs, that the company was not properly licensed or allowed to do some the work or
12 government worksite assignments that Convergint was giving them, that it was improper to "borrow" a
13 friend's contractor's license to do work, that they were not paying prevailing wages or reporting their on
14 government jobs, that they were not paying sick pay when Plaintiff got COVID from work

15 72. Plaintiff's complaints about these things resulted in retaliation against Plaintiff for his
16 complaints and ultimately his termination which is in violation of Labor Code §1102.5 and 98.6

17 81. Defendants subjected Plaintiff to adverse employment actions in retaliation for the
18 aforementioned, including discrimination, retaliation, and termination.

19 82. The damage allegations above, inclusive, are herein incorporated by reference.

20 83. The foregoing conduct of Defendants individually, or by and through their managing
21 agents was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried on by
22 Defendants with a willful and conscious disregard of the rights of Plaintiff, and subjected Plaintiff to
23 cruel and unjust hardship in conscious disregard of Plaintiff's right to be free from interference by
24 threats, intimidation, or coercion, or attempts ot interfere by threats, intimidation, or coercion such as to
25 constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive
26 damages in an amount appropriate to punish or make an example of Defendants.

27 84. In addition to all other remedies available, Plaintiff is entitled to a civil penalty of
28 \$10,000 pursuant to Labor Code §1102.5(f) as well as Labor Code §98.6.

THIRTEENTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(As to All Defendants)

85. Plaintiff refers to, and incorporates herein by reference, the allegations of Paragraphs 1 through 84 inclusive, as though fully set forth herein.

86. During the course of Plaintiff's employment with Defendant he not compensated properly for the hours and overtime he worked each week, and suffered other violations of the labor code in violation of California wage and hour codes and also observed Defendants other practices which were violating the law as discussed above.

87. Plaintiff complained to Defendants' owners and officers that Defendants practices were violating the law. Plaintiff complained regarding the labor code violations described above, and he also complained about illegal deductions taken from his pay, that Louis Calderon had said that Defendants Jesse and Nathan Rosales were paying him "kickbacks" in order to get jobs, that the company was not properly licensed or allowed to do some the work or government worksite assignments that Convergent was giving them, that it was improper to "borrow" a friend's contractor's license to do work, that they were not paying prevailing wages or reporting their on government jobs, that they were not paying sick pay when Plaintiff got COVID from work

88. Plaintiff's complaints were ignored, and then he was ultimately terminated because of Plaintiff's complaints. As a result, plaintiff was wrongfully terminated as a result of his complaints.

89. As a direct, foreseeable, and proximate result of Defendants' discriminatory acts, Plaintiff has suffered and continues to suffer substantial losses in earnings and job benefits, and has suffered, and continues to suffer, humiliation embarrassment, and mental and emotional distress, all to Plaintiff's damage in an amount in excess of the minimum jurisdiction of this court, the precise amount of which will be proven at trial.

90. Plaintiff is informed and believes, and thereon alleges, that the acts described herein were committed maliciously, fraudulently, and oppressively, with an improper and evil motive, and in conscious disregard of Plaintiff's rights.

91. Because the acts taken towards Plaintiff were carried out in a despicable, deliberate, and intentional manner, Plaintiff is entitled to recover punitive damages from Defendants in an amount

1 according to proof. Further, Plaintiff is informed and believes, and thereon alleges, that the acts
2 described herein were committed and/or authorized by individuals employed by Defendant in a
3 managerial capacity and acting within the course and scope of said managerial employment with
4 Defendant.

5 92. As a result of Plaintiff's wrongful termination, Plaintiff has suffered damages in an
6 amount to be determined at trial.

7 **JURY TRIAL DEMAND**

8 Plaintiff hereby demands trial by jury in the above causes.

9 **PRAYER FOR RELIEF**

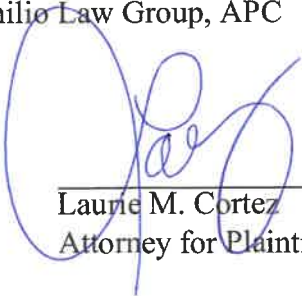
10 WHEREFORE, Plaintiff prays for relief as follows:

- 11 1. For liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon
12 pursuant to Labor Code Section 1194.2
- 13 2. For Injunctive Relief as provided by the Labor Code including, but not limited to, Labor
14 Code Sections 226(d), 248.5, and Business and Professions Code §17200
- 15 3. For Restitution provided by Labor Code Section 248.5 and Business and Professions Code
16 17200, et seq.
- 17 4. For an order requiring Defendants to restore and disgorge all funds to Plaintiff acquired by
18 means of any act or practice declared by this Court to be unlawful, unfair or fraudulent,
- 19 5. For an award of damages in the amount of unpaid compensation and monies including but
20 not limited to actual damages, unpaid minimum, regular and overtime wages, unpaid meal
21 and rest period wages, unpaid benefits, waiting time penalties and other penalties according
22 to proof, including interest thereon,
- 23 6. For an award of an additional hour of pay at the regular rate of compensation pursuant to
24 Labor Code Section 226. 7(b) for each meal and rest period not in accordance with an
25 applicable Order of the Industrial Welfare Commission,
- 26 7. For an award of the greater of actual damages or the liquidated damage amounts provided by
27 Labor Code section 226(e) for Defendants' failure to provide accurate itemized wages
28 statements, pursuant to Labor Code section 226(a),

8. For civil and statutory penalties to the extent permitted by law, including those pursuant to the Labor Code, Private Attorneys General Act, and the Orders of the Industrial Welfare Commission,
9. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, for other special damages, and for general damages for mental pain, anguish and emotional distress,
10. For Punitive Damages, pursuant to Civil Code §3294 in an amount sufficient to punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future,
11. For waiting time penalties under Labor Code §203;
12. For special damages, according to proof;
13. For an award of interest, including prejudgment interest, at the legal rate;
14. For damages and penalties pursuant to California Labor Code;
15. For civil penalties pursuant to California Labor Code
16. For damages & penalties pursuant to IWC Wage Orders;
17. For all remedies provided under the Labor Code;
18. For an award of attorney fees as allowed by law;
19. For costs of suit incurred; and
20. For such other and further relief as the court deems appropriate.

DATED: May 17, 2022

Emilio Law Group, APC



Laurie M. Cortez
Attorney for Plaintiff