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and on behalf of all others similarly situated.

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**05/04/2022** at 11:31:00 AM  
Clerk of the Superior Court  
By Emily Schilawski, Deputy Clerk

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

MICHAEL ROBERT OCHOA,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

CITY WIDE PROTECTION SERVICES  
INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2022-00006534-CU-OE-CTL

*Assigned for All Purposes to:  
Judge Carolyn Caietti; Dept. C-70*

**[Amended as a matter of right, pursuant to  
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Unlawful Deductions;
6. Failure to Reimburse Business Expenses;
7. Failure to Provide Accurate Itemized Wage Statements;
8. Failure to Pay Weekly;
9. Failure to Pay All Wages Due Upon Separation of Employment;
10. Violation of Business and Professions Code §§ 17200, *et seq.*; and
11. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Michael Robert Ochoa, individually and on behalf of others similarly situated,  
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Michael Robert Ochoa (“Plaintiff”) brings this putative class action and  
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §  
6 2698 *et seq.*, against defendants City Wide Protection Services Inc., and DOES 1 through 20,  
7 inclusive (“Defendants”), on Plaintiff’s own behalf and on behalf of Defendants’ non-exempt  
8 employees throughout California.

9 2. Defendants are in the industry of providing security services.

10 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic  
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare  
12 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair  
13 competition.

14 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have  
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation  
19 in lieu thereof;
- 20 (d) making improper deductions from employees’ earned wages;
- 21 (e) failing to reimburse necessary business-related costs;
- 22 (f) failing to provide accurate itemized wage statements; and
- 23 (g) failing to pay all wages due upon separation of employment.

24 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all  
25 others similarly situated in California to recover, among other things, unpaid wages, un-  
26 reimbursed business expenses, benefits, interest, attorneys’ fees, costs and expenses, and  
27 penalties pursuant to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 221, 223, 224, 225.5, 226,  
28

226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

### **JURISDICTION AND VENUE**

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

### **THE PARTIES**

10. Plaintiff is a resident of California and worked for Defendants during the relevant time periods as alleged herein.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this

1 Complaint and serve such fictitiously named defendants once their names and capacities become  
2 known.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20  
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at  
5 all relevant times.

6 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted  
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint  
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant  
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the  
10 employer and/or joint employer of Plaintiff and the class members.

11 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts  
12 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES  
13 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the  
14 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the  
15 official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of  
17 such agency or employment, or ratified each and every act or omission complained of herein. At  
18 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of  
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiff is informed and believes, and thereon alleges, that each of said  
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own  
25 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor  
26 Code, Business and Professions Code §§ 17200, and IWC Wage Order violations.

27 19. All claims alleged herein arise under California law for which Plaintiff seeks  
28 relief authorized by California law.

1           20.     Plaintiff's proposed class consists of and is defined as follows:

2  
3                 Class

4                 All California residents currently or formerly employed by Defendant as non-  
5                 exempt employees in the State of California at any time between August 24,  
6                 2017<sup>1</sup> and the date of class certification ("Class").

7           21.     Plaintiff also seeks to certify the following subclasses of employees:

8                 Waiting Time Subclass

9                 All members of the Class who separated their employment with Defendant at any  
10                time between August 24, 2018 and the date of class certification ("Waiting Time  
11                Subclass").

12           22.     Plaintiff reserves the right to modify or re-define the Class, establish additional  
13                subclasses, or modify or re-define any class or subclass definition as appropriate based on  
14                investigation, discovery, and specific theories of liability.

15           23.     Members of the Class and the Waiting Time Subclass described above will be  
16                collectively referred to as "Class Members."

17           24.     There are common questions of law and fact as to the Class Members that  
18                predominate over any questions affecting only individual members including, but not limited to,  
19                the following:

20                   (a)     Whether Defendants failed to pay Plaintiff and Class Members all wages  
21                               (including minimum wages and overtime wages) for all hours worked by  
22                               Plaintiff and Class Members.

23                   (b)     Whether Defendants required Plaintiff and Class Members to work over  
24                               eight (8) hours per day, over twelve (12) hours per day, and/or over forty  
25

26  
27                <sup>1</sup> The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020  
28                pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

(40) hours per week and failed to pay them proper overtime compensation for all overtime hours worked.

(c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods or required Plaintiff and Class Members to work through meal periods without legal compensation.

(d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through rest breaks.

(e) Whether Defendants made unlawful deductions from Plaintiff's and Class Members' wages.

(f) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business-related costs expended for the benefit of Defendants.

(g) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements.

(h) Whether Defendants were required to and failed to pay wages weekly to Plaintiff and Class Members.

(i) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(j) Whether Defendants' conduct was willful or reckless.

(k) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and subclasses are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than fifty (50) individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

1 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims  
2 (or defenses, if any) of the Class Members because Defendants' failure to comply with the  
3 provisions of California's wage and hour laws entitled each Class Member to similar pay,  
4 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries  
5 sustained by the Class Members, because they arise out of and are caused by Defendants'  
6 common course of conduct as alleged herein.

7 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the  
8 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims  
9 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed  
10 class counsel, are competent and experienced in litigating large employment class actions and  
11 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has  
12 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and  
13 costs that have been and will be necessarily expended for the prosecution of this action for the  
14 substantial benefit of the Class Members.

15 (d) Superiority: The nature of this action makes use of class action  
16 adjudication superior to other methods. A class action will achieve economies of time, effort, and  
17 expense as compared with separate lawsuits and will avoid inconsistent outcomes because the  
18 same issues can be adjudicated in the same manner for the entire Class and Waiting Time  
19 Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods  
20 to efficiently manage this case as a class action.

21 (e) Public Policy Considerations: Employers in the State of California violate  
22 employment and labor laws every day. Current employees are often afraid to assert their rights  
23 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions  
24 because they believe their former employers might damage their future endeavors through  
25 negative references and/or other means. Class actions provide class members who are not named  
26 in the complaint with a type of anonymity that allows for the vindication of their rights while  
27 affording them privacy protections.

28 **GENERAL ALLEGATIONS**

1           26.     At all relevant times mentioned herein, Defendants employed Plaintiff and other  
2 California residents as non-exempt employees throughout California at Defendants' California  
3 business location(s).

4           27.     Defendants continue to employ non-exempt employees within California.

5           28.     Plaintiff is informed and believes, and thereon alleges, that at all times herein  
6 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who  
7 were knowledgeable about California's wage and hour laws, employment and personnel  
8 practices, and the requirements of California law.

9           29.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
10 should have known that Plaintiff and Class Members were entitled to receive wages for all time  
11 worked (including minimum wages and overtime wages) and that they were not receiving all  
12 wages earned for work that was required to be performed. In violation of the Labor Code and  
13 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum  
14 wages and overtime wages) for all hours worked at the correct rate of pay.

15           30.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and Class Members were entitled to receive all required meal  
17 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular  
18 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the  
19 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal periods  
20 or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of  
21 pay when they did not receive a timely, uninterrupted meal period.

22           31.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
23 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or  
24 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay  
25 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC Wage  
26 Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)  
27 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break  
28 was missed, late, interrupted, or on-duty.

1           32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2 should have known that Plaintiff and Class Members were entitled to all earned wages without  
3 unlawful deductions. In violation of the California Labor Code, Defendants made unlawful  
4 deductions from Plaintiff's and Class Members' wages.

5           33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that Plaintiff and Class Members were entitled to reimbursement and/or  
7 indemnification for all necessary business expenditures or losses as a direct consequence of the  
8 discharge of their duties, or of their obedience to the directions of Defendants. In violation of the  
9 Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary business  
10 expenses or losses, such as personal cell phone use required to use Defendants' Mobile App, but  
11 were not reimbursed nor indemnified of such expenses or losses that were incurred as a direct  
12 consequence of the discharge of their duties, or of their obedience to the directions of  
13 Defendants.

14           34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that Plaintiff and Class Members were entitled to receive itemized wage  
16 statements that accurately showed the following information pursuant to the Labor Code: (1)  
17 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units  
18 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all  
19 deductions, provided that all deductions made on written orders of the employee may be  
20 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for  
21 which the employee is paid; (7) the name of the employee and only the last four digits of his or  
22 her social security number or an employee identification number other than a social security  
23 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable  
24 hourly rates in effect during the pay period and the corresponding number of hours worked at  
25 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members  
26 were not provided with accurate itemized wage statements.

27           35. Defendants knew or should have known that they were required to pay Plaintiffs  
28 and Class Members on a weekly basis. Plaintiffs and Class Members provided security services

1 and/or were employed as security guards who were assigned to provide security services to  
2 specific businesses, often on a temporary basis, for under ninety (90) days. Yet Plaintiffs and  
3 Class Members were not paid on a weekly basis as required under Labor Code § 201.3.

4 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
5 should have known that the Waiting Time Subclass was entitled to timely payment of wages due  
6 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did  
7 not receive payment of all wages within the permissible time periods.

8 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
9 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants  
10 had the financial ability to pay such compensation but willfully, knowingly, and intentionally  
11 failed to do so in order to increase Defendants' profits.

12 38. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief  
13 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover,  
14 among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal  
15 period premium payments, unpaid rest period premium payments, unreimbursed business  
16 expenditures, interest, attorneys' fees, penalties, costs, and expenses.

## 17 **FIRST CAUSE OF ACTION**

### 18 **FAILURE TO PAY MINIMUM WAGES**

19 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order §3-4)

20 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
21 though fully set forth herein.

22 40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees  
23 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser  
24 wage than the minimum so fixed is unlawful.

25 41. Plaintiff and Class Members were employees entitled to the protections of Labor  
26 Code §§ 1194 and 1197.

27 42. During the relevant time period, Defendants failed to pay Plaintiff and Class  
28 Members all wages owed when Defendants did not pay for all hours worked.

1           43.     During the relevant time period, Defendants failed to pay at least minimum wage  
2 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

3           44.     Defendants' failure to pay Plaintiff and Class Members the required minimum  
4 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class  
5 Members are entitled to recover the unpaid balance of their minimum wage compensation as  
6 well as interest, costs, and attorneys' fees.

7           45.     Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to  
8 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued  
9 interest thereon.

10                               **SECOND CAUSE OF ACTION**

11                               **FAILURE TO PAY OVERTIME**

12           (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

13           46.     Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
14 though fully set forth herein.

15           47.     Labor Code § 1198 and the applicable IWC Wage Order provide that it is  
16 unlawful to employ persons without compensating them at a rate of pay either one and one-half  
17 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours  
18 worked by the person on a daily or weekly basis.

19           48.     Specifically, the applicable IWC Wage Orders provide that Defendants are and  
20 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one  
21 and one-half times (1½) their regular rate of pay when working and for all hours worked in  
22 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first  
23 eight (8) hours of work on the seventh day of work in a workweek.

24           49.     The applicable IWC Wage Orders further provide that Defendants are and were  
25 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times  
26 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in  
27 a day or in excess of eight (8) hours on the seventh day of work in a workweek.

1           50.     California Labor Code § 510 codifies the right to overtime compensation at one  
2 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a  
3 day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh  
4 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours  
5 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the  
6 seventh day of work in a workweek.

7           51.     Labor Code § 510 and the applicable IWC Wage Orders provide that employment  
8 of more than six days in a workweek is only permissible if the employer pays proper overtime  
9 compensation as set forth herein.

10          52.     Plaintiff and Class Members were employees entitled to the protections of  
11 California Labor Code §§ 510 and 1194.

12          53.     During the relevant time period, Defendants required Plaintiff and Class Members  
13 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh  
14 consecutive day of work, entitling them to overtime wages.

15          54.     During the relevant time period, Defendants failed to pay Plaintiff and Class  
16 Members overtime wages for all overtime hours worked at the correct rate of pay. To the extent  
17 these hours qualify for the payment of overtime wages, Plaintiff and Class Members were not  
18 paid proper overtime wages. Further, when Defendants paid overtime wages, they were  
19 sometimes miscalculated because, among other reasons, Defendants did not include all non-  
20 discretionary pay in the calculation.

21          55.     In violation of California law, Defendants knowingly and willfully refused to  
22 perform their obligations and compensate Plaintiff and Class Members for all wages earned and  
23 all hours worked.

24          56.     Defendants' failure to pay Plaintiff and Class Members the unpaid balance of  
25 overtime compensation, as required by California law, violates the provisions of Labor Code §§  
26 510 and 1198, and is therefore unlawful.

1           57. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to  
2 recover their unpaid overtime and double time compensation as well as interest, costs, and  
3 attorneys' fees.

4                                   **THIRD CAUSE OF ACTION**

5                                   **FAILURE TO PROVIDE MEAL PERIODS**

6           (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

7           58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
8 though fully set forth herein.

9           59. Labor Code § 226.7 provides that no employer shall require an employee to work  
10 during any meal period mandated by the IWC Wage Orders.

11          60. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall  
12 employ any person for a work period of more than five (5) hours without a meal period of not  
13 less than 30 minutes, except that when a work period of not more than six (6) hours will  
14 complete the day's work the meal period may be waived by mutual consent of the employer and  
15 the employee."

16          61. Labor Code § 512(a) provides that an employer may not require, cause, or permit  
17 an employee to work for a period of more than five (5) hours per day without providing the  
18 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if  
19 the total work period per day of the employee is not more than six (6) hours, the meal period may  
20 be waived by mutual consent of both the employer and the employee.

21          62. Labor Code § 512(a) also provides that an employer may not employ an employee  
22 for a work period of more than ten (10) hours per day without providing the employee with a  
23 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no  
24 more than twelve (12) hours, the second meal period may be waived by mutual consent of the  
25 employer and the employee only if the first meal period was not waived.

26          63. During the relevant time period, Plaintiff and Class Members did not receive  
27 compliant meal periods for working more than five (5) and ten (10) hours per day because their  
28

1 meal periods were missed, late, short, interrupted, on-duty, and/or they were not permitted to  
2 take a second meal period.

3 64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require  
4 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of  
5 compensation for each work day that a compliant meal period is not provided.

6 65. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal  
7 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)  
8 and section 11 of the applicable IWC Wage Order.

9 66. As a result of Defendants' failure to pay Plaintiff and Class Members an  
10 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and  
11 Class Members suffered and continue to suffer a loss of wages and compensation.

#### 12 **FOURTH CAUSE OF ACTION**

##### 13 **FAILURE TO PERMIT REST BREAKS**

14 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

15 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
16 though fully set forth herein.

17 68. Labor Code § 226.7(a) provides that no employer shall require an employee to  
18 work during any rest period mandated by the IWC Wage Orders.

19 69. Section 12 of the applicable IWC Wage Order states "[e]very employer shall  
20 authorize and permit all employees to take rest periods, which insofar as practicable shall be in  
21 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the  
22 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major  
23 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

24 70. During the relevant time period, Plaintiff and Class Members did not receive a ten  
25 (10) minute rest period for every four (4) hours or major fraction thereof worked, including  
26 working in excess of ten (10) hours in a day, because they were required to work through their  
27 rest periods, were required to remain on-duty during rest periods, and/or were not authorized to  
28 take their rest periods.

71. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period is not provided.

72. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

73. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

## FIFTH CAUSE OF ACTION

## UNLAWFUL DEDUCTIONS FROM EARNED WAGES

(Violation of Labor Code § 221, 223, 224; Violation of IWC Wage Order)

74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

75. Labor Code § 221 provides that employers may not collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

76. Labor Code § 223 provides that where a contract requires an employer to maintain the designated wage scale, it is unlawful to pay a lower wage while purporting to pay the wage designated by contract.

77. Labor Code § 224 prohibits employers from making deductions from an employee's wages not authorized by the employee in writing or permitted by law.

78. During the relevant time period, Defendants had a policy and practice of making unlawful deductions from earned wages of Plaintiff and Class Members.

79. As a result of Defendants' failure to refrain from making improper deductions from earned wages, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation, the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Violation of Labor Code §§ 2800, 2802)

4 80. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
5 though fully set forth herein.

6 81. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his  
7 employee for losses caused by the employer’s want of ordinary care.”

8 82. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her  
9 employee for all necessary expenditures or losses incurred by the employee in direct  
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
11 the employer . . . .”

12 83. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for  
13 reimbursement of necessary expenditures under this section shall carry interest at the same rate  
14 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred  
15 the necessary expenditure or loss.”

16 84. Labor Code § 2802(c) states that “[f]or purposes of this section, the term  
17 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited  
18 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

19 85. During the relevant time period, Plaintiff and Class Members incurred necessary  
20 business-related costs that were not fully reimbursed by Defendants, including, but not limited to  
21 persona cell phones required for work.

22 86. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or  
23 indemnify Plaintiff and Class Members for their expenses due to Defendants’ knowing and  
24 intentional failure to reimburse necessary business expenditures in connection with Plaintiff’s  
25 and Class Members’ work and job duties.

26 87. As a direct result, Plaintiff and Class Members have suffered and continue to  
27 suffer losses, and therefore seek complete reimbursement and indemnification of necessary  
28

1 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in  
2 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

### 3 SEVENTH CAUSE OF ACTION

#### 4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 (Violation of Labor Code § 226; Violation of IWC Wage Order)

6 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
7 though fully set forth herein.

8 89. Labor Code § 226(a) requires Defendants to provide each employee with an  
9 accurate wage statement in writing showing nine pieces of information, including, the following:  
10 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate  
11 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all  
12 deductions, provided that all deductions made on written orders of the employee may be  
13 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
14 which the employee is paid, (7) the name of the employee and the last four digits of his or her  
15 social security number or an employee identification number other than a social security number,  
16 (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly  
17 rates in effect during the pay period and the corresponding number of hours worked at each  
18 hourly rate by the employee.

19 90. During the relevant time period, Defendants have knowingly and intentionally  
20 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff  
21 and Class Members. The deficiencies include, among other things, the failure to correctly state  
22 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the  
23 number of hours worked at each hourly rate by Plaintiff and Class Members.

24 91. As a result of Defendants' knowing and intentional failure to comply with Labor  
25 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-  
26 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury  
27 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §  
28 226(a). Plaintiff and Class Members were denied both their legal right to receive, and their

1 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In  
2 addition, because Defendants failed to provide the accurate rates of pay on wage statements,  
3 Defendants prevented Plaintiff and Class Members from determining if all hours worked were  
4 paid at the appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit  
5 in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses  
6 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had  
7 Defendants provided the accurate hours worked, wages earned, and rates of pay. This has also  
8 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

9 92. Plaintiff and Class Members are entitled to recover from Defendants the greater of  
10 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty  
11 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars  
12 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding  
13 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

14 93. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and  
15 Class Members from knowing, understanding, and disputing the wages paid to them and resulted  
16 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and  
17 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members  
18 have suffered an injury, in the exact amount of damages and/or penalties to be shown according  
19 to proof at trial.

## 20 **EIGHTH CAUSE OF ACTION**

### 21 **FAILURE TO PAY WEEKLY**

22 (Violation of Labor Code §§ 201.3)

23 94. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
24 though fully set forth herein.

25 95. Pursuant to California Labor Code § 201.3, certain types of employees must be  
26 paid their wages on a weekly basis.

27 96. During the relevant time period, Defendants failed to pay the Plaintiff and Class  
28 Members on a timely basis in accordance with Labor Code § 201.3.

1           97.     Such a pattern, practice and uniform administration of corporate policy regarding  
2 timely payment of wages as described herein is unlawful and creates an entitlement to recovery  
3 by Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed,  
4 including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of  
5 California Labor Code §§ 201.3 and 203.

6           98.     As a direct and proximate cause of these violations, Class Members have been  
7 damaged, in an amount to be determined at trial.

#### 8                               **NINTH CAUSE OF ACTION**

#### 9                   **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

10                               (Violation of Labor Code §§ 201, 202, and 203)

11           99.     Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
12 though fully set forth herein.

13           100.    Labor Code §§ 201 and 202 provide that if an employer discharges an employee,  
14 the wages earned and unpaid at the time of discharge are due and payable immediately, and that  
15 if an employee voluntarily leaves his or her employment, his or her wages shall become due and  
16 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-  
17 two (72) hours previous notice of an intention to quit, in which case the employee is entitled to  
18 his or her wages at the time of quitting.

19           101.    During the relevant time period, Defendants willfully failed to pay the Waiting  
20 Time Subclass all their earned wages upon termination, including, but not limited to, proper  
21 minimum wage and overtime compensation, meal period premiums, and rest period premiums  
22 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants'  
23 employ.

24           102.    Defendants' failure to pay the Waiting Time Subclass all their earned wages at the  
25 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in  
26 violation of Labor Code §§ 201 and 202.

27           103.    Labor Code § 203 provides that if an employer willfully fails to pay wages owed  
28 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then

1 the wages of the employee shall continue as a penalty from the due date at the same rate until  
2 paid or until an action is commenced; but the wages shall not continue for more than thirty (30)  
3 days.

4 104. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover  
5 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members'  
6 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a  
7 maximum of thirty (30) days.

#### 8 **TENTH CAUSE OF ACTION**

##### 9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

10 (Violation of Business and Professions Code §§ 17200, *et seq.*)

11 105. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
12 though fully set forth herein.

13 106. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of  
14 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . .  
15 . .”

16 107. A violation of California Business and Professions Code §§ 17200, *et seq.*, may  
17 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies  
18 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to  
19 suffer injuries-in-fact.

20 108. Defendants’ policies and practices violated state law in at least the following  
21 respects:

22 (a) Failing to pay all wages earned (including minimum wage and overtime  
23 wages) to Plaintiff and Class Members at the proper rate in violation of  
24 Labor Code §§ 510, 1194, 1194.2, 1197, and 1198.

25 (b) Failing to provide compliant meal periods without paying Plaintiff and  
26 Class Members premium wages for every day said meal periods were not  
27 provided in violation of Labor Code §§ 226.7 and 512.

- (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff and Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7.
- (d) Failing to refrain from making unlawful deductions from wages in violation of Labor Code §§ 221, 223, and 224.
- (e) Failing to reimburse Plaintiff and Class Members for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802.
- (f) Failing to provide Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code § 226.
- (g) Failing to timely pay wages to Plaintiff and Class Members on a weekly basis in violation of Labor Code § 201.3.
- (h) Failing to timely pay all earned wages to the members of the Waiting Time Subclass upon separation of employment in violation of Labor Code §§ 201, 202, and 203.

109. As alleged herein, Defendants systematically engaged in unlawful conduct in violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation in lieu thereof, making unlawful deductions from wages, failing to reimburse necessary business-related costs and expenses, failing to furnish accurate wage statements, failing to pay wages weekly, and failing to pay all wages due and owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in order to decrease their costs of doing business and increase their profits.

110. At all relevant times herein, Defendants held themselves out to Plaintiff and Class Members as being knowledgeable concerning the labor and employment laws of California.

111. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of

1 doing business in order to undercut their competitors and establish and/or gain a greater  
2 foothold in the marketplace.

3 112. By violating the foregoing statutes and regulations as herein alleged, Defendants'  
4 acts constitute unfair and unlawful business practices under California Business and Professions  
5 Code §§ 17200, *et seq.*

6 113. As a result of the unfair and unlawful business practices of Defendants as alleged  
7 herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and  
8 restitution in an amount to be shown according to proof at trial.

9 114. Plaintiff seeks to enforce important rights affecting the public interest within the  
10 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged  
11 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,  
12 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class  
13 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil  
14 Procedure § 1021.5.

#### 15 **ELEVENTH CAUSE OF ACTION**

##### 16 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

17 115. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs  
18 as though fully set forth herein.

19 116. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides  
20 for a civil penalty to be assessed and collected by the Labor and Workforce Development  
21 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or  
22 employees for violation of the Labor Code may, as an alternative, be recovered through a civil  
23 action brought by an aggrieved employee on behalf of himself or herself and other current or  
24 former employees pursuant to the procedures specified in Labor Code § 2699.3.

25 117. For all provisions of the Labor Code except those for which a civil penalty is  
26 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred  
27 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two  
28

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay  
2 period in which Defendants violated these provisions of the Labor Code.

3 118. Defendants' conduct violates numerous Wage Order and Labor Code sections,  
4 including, but not limited to, the following:

- 5 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194,  
6 1197, and 1198 for failure to timely pay all earned wages (including  
7 minimum wage and overtime wages) owed to Plaintiff and other  
8 aggrieved employees during employment and upon separation of  
9 employment as herein alleged;
- 10 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal  
11 periods to Plaintiff and other aggrieved employees and failure to pay  
12 premium wages for missed meal periods as herein alleged;
- 13 c. violation of Labor Code § 226.7 for failure to permit rest breaks to  
14 Plaintiff and other aggrieved employees and failure to pay premium  
15 wages for missed rest periods as herein alleged;
- 16 d. violation of Labor Code §§ 221, 223, and 224 for failure to refrain from  
17 making unlawful deductions from Plaintiff's and other aggrieved  
18 employees' wages as herein alleged;
- 19 e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse  
20 Plaintiff and other aggrieved employees for necessary business expenses  
21 as herein alleged;
- 22 f. violation of Labor Code § 226 for failure to provide accurate itemized  
23 wage statements to Plaintiff and other aggrieved employees as herein  
24 alleged;
- 25 g. violation of Labor Code § 201.3 for failure to timely pay wages to  
26 Plaintiff and other aggrieved employees on a weekly basis as herein  
27 alleged; and  
28

1 h. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain  
2 accurate and complete records showing, among other things, the hours  
3 worked daily by and the wages paid to aggrieved employees;

4 119. Plaintiff is an “aggrieved employee” because he was employed by the alleged  
5 violator and had one or more of the violations committed against him, and therefore is properly  
6 suited to represent the interests of all other aggrieved employees.

7 120. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3  
8 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and  
9 all other aggrieved employees under PAGA.

10 121. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to  
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections  
12 cited above.

13 122. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred  
14 herein.

15 **PRAYER FOR RELIEF**

16 On Plaintiff’s own behalf and on behalf of all others similarly situated, Plaintiff prays  
17 for relief and judgment against Defendants, jointly and severally, as follows:

- 18 1. For certification under California Code of Civil Procedure § 382 of the proposed  
19 Class and any other appropriate subclass;
- 20 2. For appointment of Michael Robert Ochoa as class representative;
- 21 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
- 22 4. For compensatory damages in an amount according to proof at trial;
- 23 5. For an award of damages in the amount of unpaid compensation including, but  
24 not limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
- 25 6. For economic and/or special damages in an amount according to proof at trial;
- 26 7. For liquidated damages pursuant to Labor Code § 1194.2;
- 27 8. For statutory penalties to the extent permitted by law, including those pursuant to  
28 the Labor Code and IWC Wage Orders;

1           9.     For injunctive relief as provided by the California Labor Code and California  
2 Business and Professions Code §§ 17200, *et seq.*;

3           10.    For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

4           11.    For an order requiring Defendants to restore and disgorge all funds to each  
5 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,  
6 or fraudulent and, therefore, constituting unfair competition under Business and Professions  
7 Code §§ 17200, *et seq.*;

8           12.    For pre-judgment interest;

9           13.    For civil penalties;

10          14.    For reasonable attorneys' fees, costs of suit, and interest to the extent permitted  
11 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§  
12 226(e), 1194, and 2698 *et seq.*; and

13          15.    For such other relief as the Court deems just and proper.

14  
15 Dated: May 4, 2022

**AEGIS LAW FIRM, PC**

16  
17 By: 

Jessica L. Campbell

Attorneys for Plaintiff Michael Robert Ochoa