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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

BRANDON FIORE, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BEAUMONT MOTORCYCLES, LLC, a
California limited liability company;
COYNE POWERSPORTS BANNING, an
unknown business entity; COYNE
POWERSPORTS, LLC, a California limited
liability company; PRICELINE POWER
SPORTS, LLC, a California limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **CVRI 2201946**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Provide and Properly Calculate Sick Leave
10. Failure to Reimburse Necessary Expenses
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

This is a class and representative action brought by Brandon Fiore (hereinafter referred to as "Plaintiff"), on behalf of himself and all other similarly situated individuals, against his former employer Beaumont Motorcycles, LLC, Coyne Powersports Banning, Coyne Powersports, LLC and Priceline Power Sports, LLC (hereinafter referred to as "Defendants"), in order to hold Defendants accountable for their wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his respective personal knowledge.

1. Defendants own and operate recreational vehicle dealerships with two locations, located in the cities of Banning, California and El Centro, California.

2. At all relevant times herein, Defendants have implemented common policies and practices designed to maximize profits at the expense of their non-exempt employees. These policies and practices have resulted in systematic violations of California's wage and hour laws.

3. Defendants maximize profits by, among other common policies and practices, cutting labor costs through understaffing, denying meal and rest breaks, failing to reimburse non-exempt employees for employment-related expenses, failing to pay overtime and minimum wages, cheating their non-exempt employees out of wages and premiums, and related violations of California wage and hour laws.

4. For example, Defendants have implemented unlawful policies with respect to meal and rest breaks. Defendants also require their non-exempt employees to systematically work through meal and rest breaks while failing to pay them the legally-required premium pay for these missed and non-complaint meal and rest breaks.

5. Defendants also willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendants' understaffing and imposition of an unreasonable workload. As a result of this off the clock work, including working through meal periods and rest breaks, Defendants have failed to pay its non-exempt employees minimum wages.

6. Plaintiff and other non-exempt employees similarly do not receive reimbursements

1 for the expenses they incur in the discharge of their job duties. These expenses include the
2 purchase of Personal Protective Equipment (“PPE”) in order to work for Defendants during the
3 COVID-19 pandemic and the usage of cellular phones for business related purposes.

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

9 **JURISDICTION AND VENUE**

10 8. The Superior Court of the State of California has jurisdiction in this matter because
11 Plaintiff is a resident and citizen of California and Defendants are California limited liability
12 companies. All Class members are residents and citizens of California. No federal question is at
13 issue because Plaintiff’s claims are based solely on California law.

14 9. Venue is proper in this judicial district and the County of Riverside because
15 Plaintiff, and other persons similarly situated, performed work for Defendants in the County of
16 Riverside, and Defendant’s illegal payroll policies and practices, which are the subject of this
17 action were applied, at least in part, to Plaintiff, and other persons similarly situated, in the County
18 of Riverside.

19 **THE PARTIES**

20 10. Plaintiff is a resident and citizen of the State of California and a former employee
21 of Defendants who was employed from approximately December 13, 2021, until January 14,
22 2022. Plaintiff worked at Defendants’ automotive dealership located in Banning, California.

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

1 Defendants' failure to maintain required records and failure to provide accurate itemized wage
2 statements, and related violations of the California Labor Code.

3 12. Plaintiff is informed and believes, and thereon alleges, that Defendant, Beaumont
4 Motorcycles, LLC, is and at all times relevant hereto was, a limited liability company organized and
5 existing under the laws of the State of California.

6 13. Plaintiff is informed and believes, and thereon alleges, that Defendant, Coyne
7 Powersports Banning, is an unknown business entity, is and at all times relevant hereto was, a
8 company organized and existing under the laws of the State of California.

9 14. Plaintiff is informed and believes, and thereon alleges, that Defendant, Coyne
10 Powersports, LLC, is and at all times relevant hereto was, a limited liability company organized and
11 existing under the laws of the State of California.

12 15. Plaintiff is informed and believes, and thereon alleges, that Priceline Power Sports,
13 LLC, is and at all times relevant hereto was, a limited liability company organized and existing
14 under the laws of the State of California.

15 16. Defendants, as noted above, operate recreational vehicle dealerships and at all
16 times relevant herein were and are, a California limited liability company authorized to conduct
17 business in the state of California.

18 17. At all relevant times herein, Defendants were the joint employers of Plaintiff and
19 the other Class members. Alternatively, Plaintiff is informed and believes Defendants were the
20 alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents,
21 principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or
22 guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his,
23 her or its co-Defendants, and each was the alter ego of the other. Moreover, at all material times
24 there has been extensive interrelation of operations, common management, centralized control of
25 labor relations with respect to Plaintiff and Class members, and common ownership or financial
26 control between all Defendants.

27 18. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
28 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff

1 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
2 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
3 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
4 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to
5 allege the true names and capacities of such DOE defendants when ascertained.

6 19. Plaintiff is informed and believes, and based thereon alleges, that each defendant
7 sued in this action, including each defendant sued by the fictitious names DOES 1 through 50,
8 inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies
9 and damages alleged herein, in various capacities, including but not limited to serving as joint
10 employer, joint tortfeasor, integrated enterprise, alter ego, or agents of the other defendants. Each
11 defendant approved, participated in, controlled, or ratified the acts of all other defendants.

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

16 **CLASS ACTION ALLEGATIONS**

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

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

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

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

26 A. The proposed Class is a significant number. Plaintiff is informed and
27 believes that the proposed Class consists of at least three (300) hundred current and former non-
28 exempt employees, rendering joinder impractical.

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

- 7 1. Whether Defendants failed to provide non-exempt employees with
8 legally compliant meal periods and rest breaks, and whether
9 Defendants properly paid premium pay as a result of missed and
10 non-compliant meal periods and rest breaks;
- 11 2. Whether Defendants failed to pay overtime and minimum wages
12 non-exempt employees in compliance with California law;
- 13 3. Whether Defendants miscalculated the regular rate of pay for all
14 non-exempt employees regarding premium payments for missed
15 meal and rest periods, overtime, sick leave and other methods yet to
16 be discovered, in compliance with California law;
- 17 4. Whether Defendants failed to maintain required records and accurate
18 wage statements for non-exempt employees;
- 19 5. Whether Defendants paid all wages due at the time of separation to
20 the non-exempt employees; and
- 21 7. Whether Defendants engaged in unfair and/or unlawful business
22 practices.

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

27 D. Plaintiff is able to fairly and adequately protect the interests of all members
28 of the proposed Class because it is in his best interests to prosecute the claims alleged herein to

1 obtain full compensation due to the proposed Class for all services rendered and hours worked.
2 Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Provide Required Meal Periods**

5 **[Cal. Lab. Code §§ 226.7, 510, 512; IWC Wage Order No. 4-2001, § 11**
6 **and All Other Applicable IWC Wage Orders]**

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

8 24. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 23 (A) – (D).

10 25. During the statute of limitations period, as part of Defendants' unlawful policies
11 and practices to deprive their non-exempt employees of all wages earned and due, Defendants
12 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
13 their meal periods, to completely skip their meal periods, to take late and short meal periods, and
14 Defendants have otherwise failed to provide the required meal periods to Plaintiff and Class
15 members as required under California Labor Code §§ 226.7, 512, and § 10 of all applicable IWC
16 Orders.

17 26. Defendants have implemented several common policies and practices that have
18 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
19 periods. For example, Defendants understaff their locations such that there is an insufficient
20 number of employees to perform the work required to meet customer needs or there is so much
21 work which prevents Class members from taking compliant meal periods. As a direct
22 consequence of this policy and practice, Plaintiff and Class members have so much work to
23 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
24 take them after working longer than five (5) hours, to perform work during their meal periods, or
25 return to work after taking less than a thirty (30) minute meal period. Further, Defendants
26 systemically deprived Plaintiff and Class members of the opportunity to take second meal periods
27 even though they regularly work shifts in excess of ten (10) hours.

28 27. Defendants routinely scheduled Plaintiff and Class members to take late meal
periods (i.e., after the fifth hour of work). Defendants also systemically deprived Plaintiff and

1 Class members of the opportunity to take second meal periods even though they work shifts in
2 excess of ten hours.

3 28. Despite work conditions that systematically result in missed and non-compliant
4 meal periods, and in order to keep labor costs down, Defendants have implemented a policy and
5 practice of failing to pay meal period premium payments. In short, Defendants have violated
6 California Labor Code §§ 226.7, § 10 of the applicable IWC Wage Order, and the California
7 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to compensate
8 Plaintiff and Class members who were not authorized and permitted to take a complete, timely,
9 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay
10 for each workday that such a meal period was not authorized or permitted. Defendants further
11 violated California Labor Code sections 226.7, 510, 558, 1194, 1197, and § 10 of the applicable
12 IWC Wage Order by failing to compensate Plaintiff and Class members for all hours worked
13 during their meal periods.

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

17 **SECOND CAUSE OF ACTION**

18 **Failure to Provide Required Rest Breaks**

19 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12**

20 **and All Other Applicable IWC Wage Orders]**

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

22 30. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 29.

24 31. At all times relevant herein, as part of Defendants' illegal policies and practices to
25 deprive their non-exempt employees of all wages earned and due, Defendants failed to permit
26 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
27 and 512, and § 11 of all applicable IWC Wage Orders.

28 32. The same common policies and practices that deprive Plaintiff and Class members
from taking their meal periods, as alleged herein, similarly deprive them of the ability to take their

1 first and second rest breaks. As alleged herein, Defendants grossly understaff their stores and set
2 unrealistic work goals, which creates so much work for Plaintiff and Class members that they are
3 frequently unable to take both their first and second rest breaks.

4 33. Moreover, Defendants implemented an illegal rest period policy which fails to
5 include "major fraction thereof" and allowing rest periods for Class members who work four (4)
6 hours or more and denying rest periods for Class members who work three and a half (3 ½) hour
7 shifts rest periods. California law requires employers to provide employees with the opportunity to
8 take a third rest break during shifts that are 10 hours or longer. However, Defendants have
9 implemented a policy of preventing or not permitting Plaintiff and Class members from taking
10 third rest breaks, even when they work shifts in excess of 10 hours.

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

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

19 **THIRD CAUSE OF ACTION**

20 **Failure to Pay Overtime Wages**

21 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3 and All Other**
22 **Applicable IWC Wage Orders]**

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

24 36. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 35.

26 37. Pursuant to Cal. Lab. Code §§ 510 and 1194 and § 3 of IWC Wage Order No. 4,
27 Defendants are required to compensate Plaintiff and Class members for all overtime, which is
28 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8)

1 hours worked on the seventh (7th) consecutive day of work in a workweek, with double time for
2 all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess
3 of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

4 38. Plaintiff and Class members are current and former non-exempt employees of
5 Defendants are entitled to the protections of Cal. Lab. Code §§ 510 and 1194 and § 3 of the
6 applicable IWC Wage Order.

7 39. Defendants have failed to compensate Plaintiff and Class members for all overtime
8 hours by requiring, permitting or suffering Plaintiff and Class members to work off the clock and
9 requiring, permitting or suffering Plaintiff and Class members to work through meal and rest
10 breaks but not compensating them for this time and failing to include this time in all hours
11 worked. During any shift that is eight hours or longer, overtime pay is owed when Plaintiff and
12 Class members work off-the-clock and/or during their breaks without compensation. Defendants
13 also fail to compensate Plaintiff and the other Class members at the applicable rate of pay for
14 overtime wages based upon commissions and other incentives paid during the applicable statute of
15 limitations period.

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

23 41. Defendants' conduct described herein violates Cal. Lab. Code §§ 510, 1194, 1198
24 and § 3 of IWC Wage Order No. 4 and all other applicable IWC Wage Orders. Therefore,
25 pursuant to Cal. Lab. Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law,
26 Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by
27 Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

1 **FOURTH CAUSE OF ACTION**
2 **Failure to Provide Minimum Wages**
3 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 4-2001, § 4 and**
4 **All Other Applicable IWC Wage Orders]**
5 ***(On Behalf of Plaintiff and the Class against Defendants)***

6 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 41.

8 43. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 4 and
9 all other IWC wage orders, payment to an employee of less than the applicable minimum wage for
10 all hours worked in a payroll period is unlawful.

11 44. During the statute of limitations period, the hourly rates for Plaintiff and Class
12 members were precisely at minimum wage. Based on this common practice, Defendants failed to
13 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
14 permitting or suffering Plaintiff and Class members to work off-the-clock, such as requiring them
15 to work through meal and rest breaks, but not compensating them for this time, and failing to
16 include this time in all hours worked, and other methods to be discovered.

17 45. Defendants' conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and §
18 4 of IWC Wage Order No. 4 and all other applicable IWC wage orders. As a proximate result of
19 the aforementioned violations, Plaintiff and Class members have been damaged in an amount
20 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
21 1194, 1197.1, and any other applicable law, Plaintiff and Class members are entitled to recover the
22 unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys' fees,
23 expenses, and costs of suit.

24 **FIFTH CAUSE OF ACTION**
25 **Failure to Pay Timely Wages**
26 **[Cal. Lab. Code §§ 204, 210]**
27 ***(On Behalf of Plaintiff and the Class against Defendants)***

28 46. Plaintiff incorporates herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 45.

47. California Labor Code § 204 provides that all wages earned by any person in any
employment between the 1st and 15th days, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 16th and 26th day
2 of the month during which the labor was performed. California Labor Code § 204 further
3 provides that all wages earned by any person in any employment between the 16th and the last
4 day, inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the 1st and the 10th day of the following month.

6 California Labor Code § 204 further provides that all wages earned for labor in excess of the
7 normal work period shall be paid no later than the payday for the next regular payroll period.

8 48. During the statute of limitations period, Defendants, among other things, willfully
9 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
10 limited to, meal and rest break premiums, overtime and minimum wages, and payment for work
11 performed off-the-clock, within any time period permissible under Labor Code § 204.

12 49. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
13 Class members are entitled to all available statutory penalties, including but not limited to, civil
14 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
15 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of
16 costs, expenses, and reasonable attorneys' fees.

17 **SIXTH CAUSE OF ACTION**
18 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
19 **[Cal. Lab. Code §§ 201-203]**
20 ***(On Behalf of Plaintiff and the Class against Defendants)***

21 50. Plaintiff incorporates herein by specific reference, as though fully set forth, the
22 allegations in paragraphs 1 through 49.

23 51. Pursuant to California Labor Code §§ 201, 202, and 203, Defendants are required
24 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
25 201 mandates that if an employer discharges an employee, the employee's wages accrued and
26 unpaid at the time of discharge are due and payable immediately.

27 52. Furthermore, pursuant to California Labor Code § 202, Defendants are required to
28 pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee
quits his or her employment, unless the employee provided seventy-two (72) hours previous notice

1 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
2 of quitting.

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

7 54. During the statute of limitations period, Defendants have willfully failed to pay
8 accrued wages and other compensation to Plaintiff and Class members in accordance with
9 California Labor Code §§ 201 and 202. Because Defendants have failed to properly compensate
10 Plaintiff and Class members for all hours worked when due, failing to compensate Plaintiff and
11 Class members at their regular rate of pay based upon incentives and compensation for non-
12 compliant meal and rest breaks, Defendants have also willfully failed and continues to fail to pay
13 accrued wages and other compensation to Plaintiff and Class members in accordance with
14 California Labor Code §§ 201 and 202.

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

18 **SEVENTH CAUSE OF ACTION**

19 **Failure to Maintain Required Records**

20 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 4-2001, § 7**

21 **and All Other Applicable IWC Wage Orders]**

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

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

25 57. During the statute of limitations period, as part of Defendants' illegal payroll
26 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
27 Defendants knowingly and intentionally failed to maintain records as required under California
28 Labor Code §§ 226, 1174, and § 6 of all applicable IWC Wage Orders, including but not limited
to, the following records: total daily hours worked by each non-exempt employee; applicable rates

1 of pay; all deductions; meal periods; time records showing when each non-exempt employee
2 begins and ends each workday; COVID-19 supplemental sick leave and accurate and itemized
3 wage statements.

4 58. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
5 Class members have been damaged in an amount according to proof at trial, and are entitled to all
6 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
7 entitled to all available penalties, including but not limited to, penalties pursuant to California
8 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
9 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
10 well as other available remedies.

11 **EIGHTH CAUSE OF ACTION**
12 **Failure to Furnish Accurate Itemized Wage Statements**
13 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 4-2001, § 7**
14 **and All Other Applicable IWC Wage Orders]**
15 ***(On Behalf of Plaintiff and the Class against Defendant)***

16 59. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 58.

18 60. During the statute of limitations period, Defendants routinely failed to provide
19 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
20 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
21 earned, legal name and address of the employer and all applicable hourly rates in effect during
22 each pay period and the corresponding number of hours worked at each hourly rate, in violation of
23 California Labor Code § 226 and § 6 of the applicable IWC Wage Order.

24 61. Defendants' pay stubs violate Labor Code § 226 because Defendants failed to list
25 the legal address of the employer on the wage statements on only listed a "PO Box 908 Banning,
26 CA 92220" as the address of the employer. Moreover, Defendants routinely and intentionally fail
27 to provide Plaintiff and Class members with proper meal and rest breaks but fail to include in their
28 wage statements one (1) additional hour of compensation at their regular rates of pay for each non-
compliant meal or rest break. In addition, Defendants required Plaintiff and Class members to

1 work off-the-clock without compensation, Defendants also failed to compensate and provide on
2 the wage statements for Plaintiff and the Class members the accurate regular rate of pay for
3 overtime and sick leave based upon commissions received, and failed to accurately state all
4 applicable COVID-19 and COVID-19 supplemental sick leave hours available and amounts taken
5 on its wage statements in addition to other violations yet to be discovered. As a result of these
6 violations and others yet to be discovered, Defendants' pay stubs fail to accurately list the
7 compensation owed and due to Plaintiff and Class members

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

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

20 **NINTH CAUSE OF ACTION**

21 **Failure To Provide And Properly Calculate Mandatory California Sick Leave**

22 **[Cal. Labor Code §246]**

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

24 64. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in paragraphs 1 through 63.

26 65. Pursuant to California Labor Code §246, any employee who works in the State of
27 California and who works more than "30 or more days within a year ... is entitled to be paid sick
28 days ..." Labor Code §246(l) provides an employer shall calculate sick pay under the following
methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the

1 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
2 employee actually works overtime in that workweek.” Alternatively, pursuant to Labor Code
3 §246(1)(2), states, “Paid sick time for nonexempt employees shall be calculated by dividing the
4 employee’s total wages, including overtime premium pay, by the employee’s total hours worked in
5 the full pay periods of the prior 90 days of employment.”

6 66. During the applicable statute of limitations period, Defendants fail to comply with
7 Labor Code Section §246 by not providing Plaintiff and the other Class members with sick pay
8 pursuant to the two (2) methods as set forth in Labor Code §246(1)(1) or (2). Additionally, Plaintiff
9 is informed and believes, during the applicable statute of limitations period, Defendants violate
10 California Labor Code § 246(1)(1) by failing to pay sick leave to the Class members employees at
11 their regular rate of pay taking into consideration non-discretionary bonus payments and other
12 methods to be discovered. Alternatively, Plaintiff is informed and believes, during the applicable
13 statute of limitations period, Defendants violate Labor Code § 246(1)(2) by failing to divide the Class
14 members total wages by their total hours worked in the “full pay periods of the prior 90 days of
15 employment”.

16 **TENTH CAUSE OF ACTION**
17 **Failure to Indemnify Employees for Necessary Expenditures**
18 **[Cal. Lab. Code § 2802]**
(On Behalf of Plaintiff and the Class against Defendants)

19 67. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 66.

21 68. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all
22 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
23 of his or her duties, or of his or her obedience to the directions of the employer.

24 69. During the Class period, and in violation of Cal. Lab. Code § 2802, Defendants fail
25 to indemnify Plaintiff and Class members for all business expenses and/or losses relating to the
26 purchase of Personal Protective Equipment (“PPE”) in order to work for Defendants during the
27 COVID-19 pandemic. Defendants did not reimburse Plaintiff and the other Class members for the
28 costs of their PPE’s. Moreover, Defendants fail indemnify Plaintiff and the other Class members

1 for having to use their personal telephones for work related purposes.

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

8 **ELEVENTH CAUSE OF ACTION**
9 **Unfair and Unlawful Business Practices**
10 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**
11 ***(On Behalf of Plaintiff and the Class against all Defendants)***

12 71. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 70.

14 72. Each and every one of Defendants' acts and omissions in violation of the California
15 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited
16 to, Defendants' failure to provide required meal and rest breaks, failure to pay all wages due to
17 discharged or quitting employees or to pay timely wages, failure pay the regular rate of pay for
18 overtime wages and sick leave blending earned commissions and other incentives, failure to
19 provide and accurately pay sick leave at the regular rate of pay pursuant to Labor Code §246,
20 failure to provide supplemental COVID-19 sick leave pursuant to Labor Code §248, *et seq.*,
21 failure to furnish accurate itemized wage statements or to maintain required records, and other
22 violations yet to be discovered, constitute an unfair and unlawful business practice under
23 California Business and Professions Code § 17200 *et seq.*

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

27 74. Defendants have avoided payment of wages, the provision of meal and rest breaks,
28 and other benefits as required by the California Labor Code, the California Code of Regulations,
and the applicable IWC Wage Orders. Further, Defendants have failed to record, report, and pay

1 the correct sums of assessment to the state authorities under the California Labor Code and other
2 applicable regulations.

3 75. As a result of these unfair and unlawful business practices, Defendants have reaped
4 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
5 and members of the public. Defendants should be made to disgorge their ill-gotten gains and to
6 restore them to Plaintiff and Class members.

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

13 **TWELVETH CAUSE OF ACTION**
14 **Representative Action for Civil Penalties**
15 **[Cal. Lab. Code §§ 2698- 2699.5]**

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

17 77. Plaintiff incorporates herein by specific reference as though fully set forth the
18 allegations in paragraphs 1 through 76, with exception of the allegations in Paragraphs 21 through
19 23 (A)-(D).

20 78. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
21 § 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-
22 exempt employees of Defendants who are California citizens, pursuant to the procedures specified
23 in California Labor Code § 2699.3, because Plaintiff is employed by Defendants and the alleged
24 violations of the California Labor Code were committed against Plaintiff.

25 79. In addition to the foregoing allegations, Defendants have violated other sections of
26 the California Labor Code that gives rise to liability under the California Private Attorneys
27 General Act of 2004 ("PAGA"), Cal. Lab. Code §§ 2698-2699.5.

28 80. Specifically, Defendants have violated Cal. Lab. Code § 2810.5, which requires
employers to provide notice to their employees of fundamental information relating to their

1 employment, including their rate(s) of pay, designated pay day, the employer's intent to claim
2 allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage
3 payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for
4 overtime. The notice must be provided in the language the employer normally uses to
5 communicate employment-related information to the employee, through translated notices
6 provided by the Department of Labor.

7 81. Defendants have failed to comply with Cal. Lab. Code § 2810.5 by simply not
8 providing the required notice to Plaintiff and other aggrieved employees at any time during their
9 employment.

10 82. In addition, Defendants have violated Cal. Lab. Code § 246, which provides that an
11 employee who works in California for more than "30 or more days within a year ... is entitled to
12 be paid sick days ..." Further, Cal. Lab. Code § 246(i) requires an employer to provide an
13 employee with "written notice" that sets forth the "amount of sick leave available" on the
14 employee's wage statement pursuant to Labor Code § 226 or "... in a separate writing provided on
15 the designated pay date with the employee's payment of wages." Moreover, Defendants failed to
16 pay Class members at their regular rates of pay for sick leave by failing to blend commissions and
17 all other incentives paid with the applicable sick leave rate of pay.

18 83. Defendants have willfully violated Cal. Lab. Code § 246 by failing to provide
19 Plaintiff and other aggrieved employees who have worked for Defendants for 30 or more days
20 within one year from the commencement of their employment with any sick leave, or calculate the
21 accurate rate of pay for sick leave provided to Plaintiff and the other aggrieved employees.
22 Defendants have also violated Cal. Lab. Code § 246 by not listing the available amount of sick
23 leave on Plaintiff and other aggrieved employees' wage statements or by providing similar
24 documentation to Plaintiff and the other aggrieved employees.

25 84. Defendants failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave
26 and compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e.,
27 their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in
28 violation of California Labor Code § 248.1(b)(3)(A). Defendants also failed to provide COVID-19

1 Supplemental Sick Leave to aggrieved employees in violation of California Labor Code §
2 248.1(b)(2)(D). Defendants also failed to accurately reflect any offset and/or the current amount of
3 COVID-19 Supplemental Sick Leave available to aggrieved employees on their wage statements,
4 in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2 and for the reasons provided
5 herein.

6 85. Defendants also violated IWC Wage Order No. 4-2001, § 13. IWC Wage Order
7 No. 4-2001, § 13 provides: “Suitable resting facilities shall be provided in an area separate from
8 the toilet rooms and shall be available to employees during work hours.” Defendants have failed to
9 provide suitable resting facilities by not providing a break room, or any other appropriate
10 designated area on the work premises, where Plaintiff and other aggrieved employees could take
11 meal periods and rest breaks in violation of IWC Wage Order No. 4-2001, § 13 and all other
12 applicable IWC Wage Orders.

13 86. Defendants further violated IWC Wage Order No. 4-2001, § 14. IWC Wage Order
14 No. 4-2001, § 14 provides:

15 “(A) All working employees shall be provided with suitable seats when the
16 nature of the work reasonably permits the use of seats.

17 (B) When employees are not engaged in the active duties of their employment
18 and the nature of the work requires standing, an adequate number of suitable seats shall
19 be placed in reasonable proximity to the work area and employees shall be permitted to
20 use such seats when it does not interfere with the performance of their duties.”

21 87. Defendants have failed to provide suitable seating by not providing any seats or
22 stools at the cash registers operated by Plaintiff and other aggrieved employees. The nature of the
23 work reasonably permits the use of seats when cashiers assist customers by ringing up
24 transactions. To the extent that the use of seats could interfere with their work duties, at all times
25 herein it is and has been reasonable for Defendants to place seats in reasonable proximity to the
26 cash registers to be used by Plaintiff and other aggrieved employees when doing so would not
27 interfere with their job duties.

28 88. Pursuant to Cal. Lab. Code § 2699(a), Plaintiff seeks to recover civil penalties for
Defendants’ violations of Cal. Lab. Code provisions for which a civil penalty is specifically

1 provided, including but not limited to, the following:

- 2 a. Pursuant to Cal. Lab. Code § 210, for violations of California Labor Code §
3 204, Defendants are subject to a civil penalty in the amount of one hundred
4 dollars (\$100) for the initial violation for each failure to pay each employee,
5 and two hundred dollars (\$200) per employee for violations in subsequent
6 pay periods.
- 7 b. Pursuant to Cal. Lab. Code § 226.3, for violations of California Labor Code
8 § 226(a), Defendants are subject to a civil penalty in the amount of two
9 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
10 period where a violation occurs and one thousand dollars (\$1,000) per
11 aggrieved employee for violations in subsequent pay periods.
- 12 c. Pursuant to Cal. Lab. Code § 558(a), “[a]ny employer or other person acting
13 on behalf of an employer who violates, or causes to be violated, a section of
14 this chapter or any provision regulating hours and days of work in any order
15 of the Industrial Welfare Commission,” including Cal. Lab. Code §§ 510
16 and 512, shall be subject to a civil penalty, in addition to any other penalty
17 provided by law, of fifty dollars (\$50) for initial violations for each
18 underpaid employee for each pay period for which the employee was
19 underpaid and one hundred dollars (\$100) for each subsequent violation for
20 each underpaid employee for each pay period for which the employee was
21 underpaid. In addition, Plaintiff seeks civil penalties in the amount
22 sufficient to recover unpaid wages owed to aggrieved employees pursuant
23 to Cal. Lab. Code § 558(a).
- 24 d. Pursuant to Cal. Lab. Code § 1174.5, for violations of Cal. Lab. Code §
25 1174(d), Defendants are subject to a civil penalty of five hundred dollars
26 (\$500).
- 27 e. Pursuant to Cal. Lab. Code § 1197.1, an employer who pays or causes to be
28 paid to any employee a wage less than the minimum fixed by an order of

1 the commission, shall be subject to a civil penalty as follows: for any initial
2 violation that is intentionally committed, one hundred dollars (\$100) for
3 each underpaid employee for each pay period for which the employee is
4 underpaid; and for each subsequent violation of the same offense, two
5 hundred fifty dollars (\$250) for each underpaid employee for each pay
6 period for which the employee is underpaid regardless of whether the initial
7 violation was intentionally committed.

8 89. Cal. Lab. Code § 2699(f) provides that for all Cal. Lab. Code violations for
9 which a civil penalty is not specifically provided, the following civil penalties are established: one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
11 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation.

13 90. Plaintiff seeks to recover such civil penalties under Cal. Lab. Code § 2699(f) for
14 Defendants' violations of Cal. Lab. Code provisions for which a civil penalty is not specifically
15 provided, including but not limited to, Cal. Lab. Code §§ 201, 202, 203, 226.7, 248.2, 248.6, 1194,
16 1197, 1198, 2810.5, and 2802.

17 91. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to Cal.
18 Lab. Code § 2699(g)(1) and Cal. Code Civ. P. § 1021.5.

19 92. Pursuant to California Labor Code §§ 2699.3, on March 7, 2022, Plaintiff gave
20 written notice by certified mail to the California Labor and Workforce Development Agency
21 ("LWDA") and Defendants of the specific provisions of the California Labor Code and IWC
22 Wage Orders alleged to have been violated, including the facts and theories to support the alleged
23 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the
24 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.
25 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
26 2699.3 to commence a representative action under PAGA.

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1 12. For an order requiring and certifying the First through Eleven Causes of Action as a
2 class action;

3 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
4 Class counsel; and

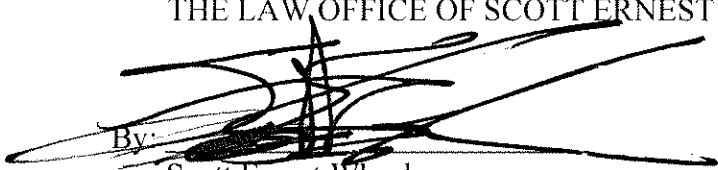
5 14. For such further relief that the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
8 with respect to all issues triable of right by jury.

9 DATED: May 12 2022

THE LAW OFFICE OF SCOTT ERNEST WHEELER

10
11 By: 

12 Scott Ernest Wheeler
13 Justin A. Wheeler

14 *Attorneys for Plaintiff and the Putative Class*
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