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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
03/04/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

CGC-22-598537

MICHAEL OSBORN, individually,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

HOGARTH CALIFORNIA LLC,
HOGARTH WORLDWIDE INC., CHRIS
NORWOOD, and DOES ONE through
FIFTY, inclusive,

Defendants.

Case No.

CLASS ACTION COMPLAINT

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
4. Failure to Maintain and Provide Accurate Itemized Employee Wage Statements
5. Failure to Pay Wages of Terminated or Resigned Employees;
6. Failure to Reimburse Necessary Business Expenses
7. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code, §§ 17200 et seq.

DEMAND FOR JURY TRIAL

**REQUEST FOR COMPLEX
DESIGNATION**

I. INTRODUCTION

1) Plaintiff MICHAEL OSBORN (“PLAINTIFF”) brings this action pursuant to California Code of Civil procedure section 382 against Defendants HOGARTH CALIFORNIA LLC, HOGARTH WORLDWIDE INC., CHRIS NORWOOD, and DOES ONE through FIFTY, inclusive (“DEFENDANTS”).

2) The class that PLAINTIFF seeks to represent (“Class”) is composed of California residents who worked for DEFENDANTS in the State of California as non-exempt tech workers paid on an hourly basis (“Class Members”) at any time during the period beginning four years prior to the filing of the original complaint through the future date of notice to the Class Members that a class has been certified in this action (“Class Period”). The wage and hour violations alleged in this Complaint revolve around DEFENDANTS’ systemic failure to pay their non-exempt California tech workers in conformance with the California Labor Code, Business and Professions Code, the applicable Wage Order, and other California statutes and caselaw.

3) Principally, DEFENDANTS failed to compensate for all hours employees were required to perform work by not recording all the hours worked. DEFENDANTS failed to pay wages for non-exempt tech workers’ preliminary duties taking place prior to the commencement of their paid work hours, such as setting up of computer equipment. This resulted in the failure to pay at least minimum wage for all hours worked and, in certain instances when such unpaid time caused an employee’s daily hours to exceed 8, or caused an employee’s weekly hours to exceed 40, DEFENDANTS failed to pay employees overtime wages.

4) Further, DEFENDANTS failed to schedule or record meal periods or rest breaks, or provide premium wages for such violations.

5) DEFENDANTS also failed to reimburse PLAINTIFF and similarly situated employees for necessary business expenses, including, without limitation, mileage reimbursement.

6) In addition, DEFENDANTS failed to pay timely pay PLAINTIFF and Class Members all wages due upon separation of employment. From these practices, which directly

1 result in unpaid time, are related other violations, including but not limited to recordkeeping
2 violations, the failure to provide proper meal and rest breaks, and wage statement violations,
3 PLAINTIFF and the class are owed wages, interest, and penalties as a result of
4 DEFENDANTS' enforcement of these policies and practices that violate the California Labor
5 Code, applicable Wage Order, and California's Unfair Competition law (Cal. Bus. & Prof. Code
6 section 17200 et seq., hereinafter "UCL"), as described below.

7 7) At all times relevant hereto, DEFENDANTS' unlawful policies and practices
8 were centrally devised and commonly applied to all Class Members.

9 8) MICHAEL OSBORN is a natural person and was a non-exempt, California-
10 based employee of DEFENDANTS during the Class Period. PLAINTIFF worked as a non-
11 exempt tech worker for DEFENDANTS and, over the course of his employment with
12 DEFENDANTS, has worked within the City and County of San Francisco. As a result of
13 DEFENDANTS' violations of the Labor Code, PLAINTIFF has suffered injury-in-fact and has
14 lost money or property as a result of DEFENDANTS' practices. This injury-in-fact and lost
15 money or property consists of lost wages, premium pay, and other harms provided by the Labor
16 Code as detailed in this Complaint. A tally of these harms cannot readily be determined as the
17 necessary records are held nearly exclusively in DEFENDANTS' possession, custody, and
18 control. However, on information and belief, this injury-in-fact amounts to hundreds of
19 thousands, if not millions, of dollars for the Class. PLAINTIFF, and the Class Members he
20 seeks to represent, were regularly subjected to, or had personal knowledge of, the violations
21 described in this Complaint and/or the allegations contained herein made on information and
22 belief based upon investigation of counsel.

23 9) Defendant HOGARTH CALIFORNIA LLC is a Delaware LLC providing tech
24 industry products and/or services. PLAINTIFF is informed and believes, and based thereon,
25 alleges that during the relevant time period, Defendant HOGARTH CALIFORNIA LLC
26 employed PLAINTIFF and similarly situated non-exempt employees in California to perform
27 tech industry work.

28 10) Defendant HOGARTH WORLDWIDE INC. is a Delaware corporation

1 providing tech industry products and/or services. PLAINTIFF is informed and believes, and
2 based thereon, alleges that during the relevant time period, Defendant HOGARTH
3 WORLDWIDE INC. employed PLAINTIFF and similarly situated non-exempt employees in
4 California to perform tech industry work.

5 11) Defendant CHRIS NORWOOD is a natural person and, on information and
6 belief, was the Global Managing Director for HOGARTH CALIFORNIA LLC and/or
7 HOGARTH WORLDWIDE INC. In this capacity, Defendant CHRIS NORWOOD was a
8 person acting on behalf of DEFENDANTS who violated and/or caused to be violated the Labor
9 Code provisions set forth herein.

10 12) The true names and capacities, whether individual, corporate, associates, or
11 otherwise of Defendants sued herein as DOES ONE through FIFTY, inclusive, are currently
12 unknown to PLAINTIFF, who therefore sues such Defendants by fictitious names under Code
13 of Civil Procedure section 474. PLAINTIFF is informed and believes, and based thereon
14 alleges, that each of the other Defendants designated herein as a DOE is legally responsible in
15 some manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of court to
16 amend this Complaint to reflect the true names and capacities of the Defendants designated
17 hereinafter as DOES when such identities become known.

18 13) PLAINTIFF is informed and believes that DEFENDANTS are liable to
19 PLAINTIFF and Class Members as “employers,” as that term is defined in section 18 of the
20 Labor Code. As the employer of PLAINTIFF and Class Members throughout the Class Period,
21 DEFENDANTS are liable for the economic damages and statutory penalties owed to
22 PLAINTIFF and Class Members.

23 II. JURISDICTION

24 14) Jurisdiction is proper in this Court pursuant to Code of Civil Procedure section
25 410.10 because the court has general subject matter jurisdiction and no statutory exception
26 exists.
27
28

III. VENUE

15) Venue is proper pursuant to California Code of Civil Procedure section 395(a), because PLAINTIFF was harmed by DEFENDANTS' violations of the California Labor Code in San Francisco County. PLAINTIFF performed work for DEFENDANTS in, without limitation, the County of San Francisco, and DEFENDANTS thus committed the acts in question in the Complaint, partly or wholly, in San Francisco County.

IV. FACTUAL ALLEGATIONS

16) As set forth below and at all times relevant hereto, DEFENDANTS' unlawful policies and practices were centrally devised and commonly applied to all Class Members, including PLAINTIFF.

17) The wage and hour violations alleged in this Complaint revolve around DEFENDANTS' systemic failure to pay their non-exempt California tech workers in conformance with the California Labor Code, Business and Professions Code, the applicable Wage Order, and other California statutes and caselaw. Principally, DEFENDANTS failed to compensate for all hours employees were required to perform unpaid work by not recording all the hours worked. This time included, without limitation, time spent setting up computers.

18) DEFENDANTS did not schedule or provide meal periods or rest breaks to their non-exempt tech sector employees, or maintain records of same. Indeed, Defendants required employees to submit their hours worked in blocks of time, without any record of a meal period having been provided, as reflected by a clock-in or clock-out times for same, or even to reflect or certify that meal periods or rest breaks had been taken. DEFENDANTS did not schedule, provide, or record meal or rest periods for non-exempt tech employees, which resulted in late, missed, on-duty, or interrupted meal and rest breaks.

19) DEFENDANTS also failed to reimburse PLAINTIFF and similarly situated employees for necessary business expenses, including, without limitation, mileage reimbursement.

20) DEFENDANTS also failed to pay all wages owed immediately or within 72

1 hours upon separation from employment in violation of Labor Code sections 201, 202, 203,
2 256, and 1197.1. DEFENDANTS systematically failed to pay all wages earned (as described
3 herein) including unpaid minimum and overtime wages and failed to pay all additional wages in
4 lieu of providing all meal periods.

5 21) DEFENDANTS also failed to issue accurate itemized wage statements to their
6 non-exempt employees by failing to account for all the time worked, and failing to include
7 premium wages for meal break violations.

8 22) As a result of the aforementioned violations of the Labor Code and applicable
9 Wage Order, DEFENDANTS, by way of their unlawful and unfair compensation system, have
10 violated California Business and Professions Code section 17200 et seq.

11 23) Owing to the preceding allegations, for at least four years prior to the filing of
12 this action and through to the present, DEFENDANTS maintained and enforced against
13 PLAINTIFF and the Class unlawful practices and policies in violation of California wage and
14 hour laws, including but not limited to:

- 15 a. forcing Class Members, including PLAINTIFF, to work “off the clock”
16 time without compensation as required by law;
- 17 b. failing to create and maintain accurate records of work periods, meal
18 periods as required by law for Class Members, including PLAINTIFF;
- 19 c. failing to pay Class Members, including PLAINTIFF, overtime and/or
20 double-overtime when required by law;
- 21 d. failing to provide proper, timely meal breaks, requiring Class Members,
22 including PLAINTIFF, to work at least five (5) hours without a full,
23 thirty-minute, uninterrupted meal period, and failing to pay such
24 employees one (1) hour of additional wages at the employees’ regular
25 rate of compensation for each workday that the meal period was not
26 provided, in violation of California state laws and public policy;

- e. failing to provide PLAINTIFF and Class Members with reimbursement for necessary business expenses including, without limitation, mileage reimbursement.
- f. failing to provide Class Members, including PLAINTIFF, with accurate itemized wage statements in violation of California law and public policy;
- g. failing to pay all wages owed (i.e., wages for all “hours worked,” and premium rest and meal period wages) to employees timely upon the termination of the employment relationship.

24) On information and belief, DEFENDANTS were on notice of the improprieties alleged and/or has intentionally, deliberately, and willfully carried out these unlawful and unfair business practices.

25) DEFENDANTS have made it difficult to account with precision for the unlawfully withheld wages due to PLAINTIFF and the Class Members during all relevant times herein, because DEFENDANTS did not fully implement and preserve a timekeeping and record-keeping method to accurately record all hours worked, meal breaks, and wages earned by its employees as required for non-exempt employees by California Labor Code sections 226 and 1174(d), and Industrial Welfare Commission Wage Orders.

26) The enforcement of statutory provisions to protect workers and to ensure, for example, pay for all hours worked and proper rest and meal breaks, is a fundamental public interest. PLAINTIFF’S successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. PLAINTIFF is incurring a financial burden in pursuing this action, and it would be against the interests of justice to require the payment of attorneys’ fees and costs from any recovery obtained.

V. CLASS ALLEGATIONS

1 27) PLAINTIFF brings this action on behalf of himself and all others similarly
2 situated as a class action pursuant to section 382 of the Code of Civil Procedure. PLAINTIFF
3 seek to represent the following “Class” composed of and defined as follows:

4
5 All non-exempt tech sector workers who are employed or have been
6 employed by DEFENDANTS in the State of California, within four (4)
7 years of the filing of the original Complaint.

8 28) On information and belief, the legal and factual issues implicated by this
9 Complaint are common to the Class and affect all Class Members. PLAINTIFF reserves the
10 right under Rule 3.765, California Rules of Court, to amend or modify the class description or
11 divide into subclasses.

12 29) This action has been brought and may properly be maintained as a class action
13 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
14 defined community of interest in the litigation and the proposed Class is easily ascertainable.

15 **A. Numerosity**

16 30) The potential members of the Class as defined are so numerous that joinder of all
17 the members of the Class is impracticable. While the precise number of Class Members have
18 not been determined at this time, PLAINTIFF is informed and believes that DEFENDANTS
19 have employed hundreds of non-exempt employees in the State of California during the Class
20 Period and who are, or have been, affected by DEFENDANTS’ unlawful practices as alleged
21 herein.

22 31) Upon information and belief, PLAINTIFF alleges that DEFENDANTS’
23 employment records would provide information as to the number and location of all Class
24 Members. Joinder of all members of the proposed Class is not practicable.

25 **B. Commonality**

26 32) There are questions of law and fact common to the Class predominating over any
27 questions affecting only individual Class Members. These common questions of law and fact
28 include, without limitation:

- 1 a. Whether DEFENDANTS violated the California Labor Code and
2 applicable Wage Order by not compensating PLAINTIFF and other Class
3 Members for all hours worked;
- 4 b. Whether DEFENDANTS violated the California Labor Code and
5 applicable Wage Order by not compensating PLAINTIFF and other Class
6 Members at hourly wage rates below the minimum wage rate;
- 7 c. Whether DEFENDANTS violated the California Labor Code and
8 applicable Wage Order by not compensating PLAINTIFF and other Class
9 Members for owed premium hours (i.e., overtime and/or double-
10 overtime);
- 11 d. Whether DEFENDANTS violated the California Labor Code and
12 applicable Wage Order by not compensating PLAINTIFF and other Class
13 Members for all hours worked;
- 14 e. Whether DEFENDANTS violated the California Labor Code,
15 Wage Orders, or public policy by failing to provide a full, timely meal
16 period to PLAINTIFF and the other Class Members on days they worked
17 work periods in excess of five hours and failing to compensate said
18 employees one hour additional wages in lieu of each meal period denied,
19 and by deducting for lunch periods that were not taken;
- 20 f. Whether DEFENDANTS violated the California Labor Code and
21 applicable Wage Order by failing to create and maintain accurate records
22 of work periods, meal periods for Class Members, including PLAINTIFF;
23 and
- 24 g. Whether DEFENDANTS committed unfair or unlawful business
25 practices in violation of section 17200 *et seq.* of the Business and
26 Professions Code.

27 **C. Typicality**

28

1 33) The claims of the named PLAINTIFF are typical of the claims of the Class.
2 PLAINTIFF and all Class Members sustained injuries and damages arising out of and caused by
3 DEFENDANTS' common course of conduct in violation of California laws, regulations, and
4 public policy as alleged herein.

5
6 **D. Adequacy of Representation**

7 34) PLAINTIFF will fairly and adequately represent and protect the interests of the
8 members of the Class. Counsel who represent PLAINTIFF are competent and experienced in
9 litigating large employment class actions.

10 **E. Superiority of Class Action**

11 35) A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the Class has been damaged and is entitled
15 to recovery by reason of DEFENDANTS' unlawful policy and/or practice of failing to
16 compensate Class Members for the unlawful practices herein complained of.

17 36) Class action treatment will allow those similarly situated persons to litigate their
18 claims in the manner that is most efficient and economical for the parties and the judicial
19 system. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 **VI. CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 FAILURE TO PAY MINIMUM WAGES
24 (CALIFORNIA LABOR CODE §§ 1194, 1194.2, 1197, WAGE ORDER 9-2001, AND
25 OTHERS).
26 (PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
27 DEFENDANTS)
28

1 37) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
2 herein.

3 38) DEFENDANTS failed to pay minimum wage for all hours worked. For example,
4 PLAINTIFF and the Class were forced to work “off the clock” time without compensation.

5 39) Labor Code section 1197 states that the minimum wage for employees is “fixed
6 by commission or by any applicable state of local law” and states that “the payment of a lower
7 wage than the minimum so fixed is unlawful.”

8 40) Absent a local minimum wage ordinance, the applicable minimum wages fixed
9 by the commission for transportation industry workers is found in Wage Order 9-2001, with
10 Section 4(A) amended and republished by the Department of Industrial Relations to account for
11 changes in state minimum wage requirements.

12 41) The minimum wage provision of the California Labor Code is enforceable by
13 private civil action pursuant to section 1194(a), which provides a private right of action to
14 recover the unpaid balance of the full amount of minimum wage or overtime compensation and
15 recovery of attorney fees and costs.

16 42) Labor Code section 1194.2 provides for recovery of “liquidated damages in an
17 amount equal to the wages unlawfully unpaid and interest thereon” in suits brought under
18 section 1194.

19 43) DEFENDANTS have the ability to pay minimum wages for all hours worked
20 and have willfully refused to pay such wages with the intent to secure for themselves a discount
21 upon this indebtedness and with the intent to annoy, harass, oppress, hinder, delay, or defraud
22 PLAINTIFF and the Class and have, therefore, also violated Labor Code section 226(a).

23 44) As a result of DEFENDANTS’ violations of the minimum wage by failing to
24 record and pay minimum wages for all hours worked, DEFENDANTS violated section 226(a)
25 by inaccurately stating gross wages earned, total hours worked, deductions, net wages, and other
26 issues as described herein. DEFENDANTS have also violated Labor Code section 226.6 and
27 Wage Order 9-2001.

28 45) In sum, PLAINTIFF, individually and on behalf of the Class, may bring this

1 action for minimum wages, interest, cost of suit, and attorney fees pursuant to section 1194(a)
2 and the UCL.

3 46) WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid
4 minimum wages, liquidated damages in the amount equal to the minimum wages withheld,
5 interest, costs, and attorney fees.

6
7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 **(CALIFORNIA LABOR CODE §§ 510, 1194, 1194.2, AND WAGE ORDER 9-2001)**

10 **(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL**
11 **DEFENDANTS)**

12 47) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
13 herein.

14 48) Labor Code section 510(a) provides for overtime for work in excess of eight
15 hours in one workday and any work in excess of 40 hours in any one work week. It also
16 provides for double-time pay for work in excess of twelve hours in a workday, overtime pay for
17 the first eight hours of work on the seventh day of a work week, and double-time pay for work
18 on the seventh day beyond the first eight hours. The same standards are set forth in Section 3(A)
19 of Wage Order 9-2001.

20 49) As described herein, DEFENDANTS violated Labor Code section 510 and the
21 applicable Wage Order by employing PLAINTIFF and/or Class Members in excess of eight
22 hours in one day, 40 hours in a workweek, and/or on the seventh day of a workweek without
23 employing PLAINTIFF and Class Members greater than eight hours on the seventh day of work
24 and in excess of twelve hours in a day without double-time pay.

25 50) PLAINTIFF, individually and on behalf of the Class, may bring this action for
26 overtime wages, interest, cost of suit, and attorney fees pursuant to section 1194(a).

27 51) WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid
28 overtime wages, interest, costs, and attorney fees.

1
2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS OR PAY ADDITIONAL WAGES IN LIEU**
4 **THEREOF**

5 (CALIFORNIA LABOR CODE §§ 226.7, 512, AND WAGE ORDER 9-2001)
6 (PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
7 DEFENDANTS)

8 52) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
9 herein.

10 53) PLAINTIFF and the Class Members were not afforded meal periods as required
11 by California law, since they were routinely required to work five hours or more without a full,
12 thirty-minute, uninterrupted meal period, no records of meal periods were maintained, and they
13 were not compensated for these missed meal periods.

14 54) California Labor Code section 226.7 states:

15 (a) No employer shall require any employee to work during any meal or
16 rest period mandated by an applicable order of the Industrial Welfare
17 Commission.

18 (b) If an employer fails to provide an employee a meal period or rest
19 period in accordance with an applicable order of the Industrial Welfare
20 Commission, the employer shall pay the employee one additional hour
21 of pay at the employee's regular rate of compensation for each work
22 day that the meal or rest period is not provided.

23 55) The applicable wage order issued by the Industrial Welfare Commission is Wage
24 Order 9-2001. Section 11 of Wage Order 9-2001 states with regards to meal periods:

25 (A) No employer shall employ any person for a work period of more
26 than five (5) hours without a meal period of not less than 30 minutes,
27 except that when a work period of not more than six (6) hours will
28 complete the day's work the meal period may be waived by mutual
consent of the employer and employee. Unless the employee is
relieved of all duty during a 30 minute meal period, the meal period
shall be considered an "on duty" meal period and counted as time
worked. An "on duty" meal period shall be permitted only when the
nature of the work prevents an employee from being relieved of all
duty and when by written agreement between the parties an on-the-job
paid meal period is agreed to. The written agreement shall state that
the employee may, in writing, revoke the agreement at any time.

1 (B) If an employer fails to provide an employee a meal period in
2 accordance with the applicable provisions of this Order, the employer
3 shall pay the employee one (1) hour of pay at the employee's regular
4 rate of compensation for each workday that the meal period is not
5 provided.

6 56) A similar provision is contained in Labor Code section 512, which states:

7 (a) An employer shall not employ an employee for a work period of
8 more than five hours per day without providing the employee with a
9 meal period of not less than 30 minutes, except that if the total work
10 period per day of the employee is no more than six hours, the meal
11 period may be waived by mutual consent of both the employer and
12 employee. An employer shall not employ an employee for a work
13 period of more than 10 hours per day without providing the employee
14 with a second meal period of not less than 30 minutes, except that if
15 the total hours worked is no more than 12 hours, the second meal
16 period may be waived by mutual consent of the employer and the
17 employee only if the first meal period was not waived.

18 57) In this case, there was no mutual waiver of meal periods and employees worked
19 for periods of more than five hours without an off-duty meal period of at least 30 minutes. Any
20 express or implied waivers obtained from PLAINTIFF and the Class Member was not willfully
21 obtained, was not voluntarily agreed to, was a condition of employment, or part of a contract of
22 an unlawful adhesion. Therefore, as noted above, DEFENDANTS violated Labor Code
23 sections 226.7, 512, and the applicable Wage Order. As such, DEFENDANTS are liable for
24 one hour of pay at each respective employee's regular rate of compensation for each workday
25 that meal periods were not provided.

26 58) By failing to keep adequate time records required by Labor Code sections 1174
27 and the Wage Order, DEFENDANTS made it difficult to calculate the unpaid meal period
28 compensation due PLAINTIFF and the Class Members. As a consequence, PLAINTIFF and
the Class Members may be entitled to prove their damages to this claim by just and reasonable
inference.

59) As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and the Class
Members have been deprived of premium wages in amounts to be determined at trial and are

entitled to recovery of such amounts, plus interest and penalties thereon, attorney fees, and costs, under Labor Code sections 226.7, 1194, other statutes, and Wage Order 9.

60) WHEREFORE, PLAINTIFF and the Class Members are entitled to recover the unpaid meal break premiums, interest, costs, and attorney fees.

FOURTH CAUSE OF ACTION

FAILURE TO MAINTAIN AND PROVIDE ACCURATE ITEMIZED EMPLOYEE WAGE STATEMENTS AND RECORDS

(CALIFORNIA LABOR CODE §§ 226, 1174, 1175, AND WAGE ORDER 9-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL DEFENDANTS)

61) PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

62) California Labor Code section 226(a) states:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), . . . (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

63) DEFENDANTS failed to provide "accurate itemized statements" to PLAINTIFF and the Class Members, because the wage statements: 1) falsely understated the gross wages earned; 2) falsely stated or omitted total hours worked; 3) falsely understated net wages earned; and 4) falsely stated or omitted the numbers of hours worked at each hourly rate.

64) California Labor Code section 226(e) and (g) provide for the remedy for the violations described above:

1 (e) An employee suffering injury as a result of a knowing and intentional
2 failure by an employer to comply with subdivision (a) is entitled to
3 recover the greater of all actual damages or fifty dollars (\$50) for the
4 initial pay period in which a violation occurs and one hundred dollars
5 (\$100) per employee for each violation in a subsequent pay period, not
6 exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 is entitled to an award of costs and reasonable attorney's fees.

8 (g) An employee may also bring an action for injunctive relief to ensure
9 compliance with this section and is entitled to an award of costs and
10 reasonable attorney's fees.

11 65) By failing to keep adequate time records required by sections 226 and 1174 (d)
12 of the Labor Code, DEFENDANTS have made it difficult to calculate the unpaid hours and
13 premiums due and the applicable hourly rates of pay for said hours and premiums, and
14 PLAINTIFF and the Class are entitled to up to \$4,000.00 in penalties each.

15 66) WHEREFORE, PLAINTIFF and the Class Members they seek to represent are
16 entitled to damages in an amount to be determined at trial, not to exceed \$4,000 per employee,
17 cost of suit, attorney fees, and injunctive relief.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION** 20 **(CALIFORNIA LABOR CODE §§201, 202, 203)** 21 **(ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

22 67) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
23 herein.

24 68) California Labor Code Section 201 states:

25 (a) If an employer discharges an employee, the wages earned and
26 unpaid at the time of discharge are due and payable immediately...

27 69) California Labor Code Section 202(a) states:

28 If an employee not having a written contract for a definite period
quits his or her employment, his or her wages shall become due and
payable not later than 72 hours thereafter, unless the employee has

1 given 72 hours previous notice of his or her intention to quit, in
2 which case the employee is entitled to his or her wages at the time
3 of quitting. . . .

4 70) As described above, DEFENDANTS failed to timely pay PLAINTIFF and the
5 Class Members all of their wages due for work performed and this failure continued through the
6 time in which PLAINTIFF and Class Members quit or were discharged from their employment
7 with DEFENDANTS. As a result, DEFENDANTS have violated California Labor Codes §§
8 201 and 202.

9 71) California Labor Code § 203 states:

10 If an employer willfully fails to pay, without abatement or
11 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,
12 any wages of an employee who is discharged or who quits, the
13 wages of the employee shall continue as a penalty from the due
14 date thereof at the same rate until paid or until an action therefor is
15 commenced; but the wages shall not continue for more than 30
16 days. An employee who secretes or absents himself or herself to
17 avoid payment to him or her, or who refuses to receive the
18 payment when fully tendered to him or her, including any penalty
19 then accrued under this section, is not entitled to any benefit under
20 this section for the time during which he or she so avoids payment.
21 Suit may be filed for these penalties at any time before the
22 expiration of the statute of limitations on an action for the wages
23 from which the penalties arise.

24 72) The statute of limitations for an action for the wages at issue is four years
25 pursuant to California Business and Professions Code § 17200. DEFENDANTS violated
26 California Labor Code §§ 201 and 202 by failing to pay employees who quit or were discharged
27 all of the wages due pursuant to the timelines provided in those sections. DEFENDANTS
28 willfully failed to pay all wages due as the failure to pay was not inadvertent or accidental. As a
result, PLAINTIFF is entitled to thirty (30) days' wages including overtime.

73) PLAINTIFF and the Class he seeks to represent are entitled to compensation for
all forms of wages earned, including, but not limited to, compensation for unprovided meal
periods, and compensation for work done "off the clock" and/or at hourly rates below the

1 minimum wage, and other owed wages but to date have not received such compensation
2 therefore entitling them to Labor Code § 203 penalties.

3 74) More than thirty (30) days have passed since PLAINTIFF and affected Class
4 Members have left DEFENDANTS' employ, and on information and belief, have not received
5 payment pursuant to Labor Code § 203. As a consequence of DEFENDANTS' willful conduct
6 in not paying all earned wages, PLAINTIFF and certain Class Members who are no longer
7 employed by DEFENDANTS are entitled to thirty (30) days' wages as a penalty under Labor
8 Code § 203 for failure to pay legal wages, together with interest thereon and attorneys' fees and
9 costs.

10 75) Under California Labor Code § 558.1, any natural person who is an owner,
11 director, officer, or managing agent of an employer, acting on behalf of the employer, who
12 violates or causes to be violated any provision regulating minimum wages or hours and days of
13 work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
14 Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for
15 such violation. Therefore, Defendant CHRIS NORWOOD is liable for the violations herein
16 alleged.

17 76) Wherefore, PLAINTIFF and the Class request relief as described herein and
18 below.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REIMBURSEMENT FOR NECESSARY BUSINESS**
21 **EXPENDITURES**

22 **(Cal. Lab. Code § 2802)**

23 **(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL**
24 **DEFENDANTS)**

25 77) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
26 herein.

27 78) Labor Code § 2802 required DEFENDANTS to indemnify PLAINTIFF and the
28 Class he seeks to represent for all necessary expenditures or losses incurred by these employees

1 in direct consequence of the discharge of their duties.

2 79) DEFENDANTS failed to provide to PLAINTIFF and the Class he seeks to
3 represent with reimbursement for business expenses necessarily incurred in the performance of
4 their duties including, without limitation, mileage incurred in performing work duties and/or
5 errands.

6 80) As a direct and proximate cause of the failure of DEFENDANTS to indemnify
7 employees, the Class incurred out of pocket expenses and suffered a loss of wages in an amount
8 to be proven at trial.

9 81) Under Labor Code § 558.1, any natural person who is an owner, director, officer,
10 or managing agent of an employer, acting on behalf of the employer, who violates or causes to
11 be violated any provision regulating minimum wages or hours and days of work in any order of
12 the Industrial Welfare Commission, or violates, or causes to be violated, Labor Code §§ 203,
13 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
14 Therefore, Defendant CHRIS NORWOOD is liable for the violations herein alleged.

15 82) Wherefore, PLAINTIFF and the Class request relief as described herein and
16 below.

17 **SEVENTH CAUSE OF ACTION**
18 **VIOLATION OF UNFAIR COMPETITION LAW**
19 **(CALIFORNIA BUS. & PROF. CODE §§ 17200 ET SEQ.)**
20 **(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL**
21 **DEFENDANTS)**

22 83) PLAINTIFF incorporates all preceding paragraphs as though fully set forth
23 herein.

24 84) By their policies and practices described above, DEFENDANTS engaged in
25 unlawful activity prohibited by Business and Professions Code sections 17200 et seq.
26 DEFENDANTS' actions as alleged within this Complaint constitute unlawful and unfair
27 business practices, within the meaning of Business and Professions Code sections 17200 et seq,
28 and PLAINTIFF and similarly situated employee Class members have suffered injury and have
lost money or property as a result of DEFENDANTS' failure to comply with well-established
labor laws.

1 85) As a result of their unlawful acts, DEFENDANTS reaped and continue to reap
2 unfair benefits and unlawful profits at the expense of PLAINTIFF and the Class Members.
3 DEFENDANTS should be enjoined from this activity and made to disgorge these ill-gotten
4 gains and restore to PLAINTIFF and the Class Members the wrongfully withheld wages
5 pursuant to Business and Professions Code section 17203. PLAINTIFF is informed and believes
6 and thereon alleges that DEFENDANTS have been unjustly enriched through these unlawful
7 practices.

8 86) The unlawful conduct alleged herein is continuing, and there is no indication that
9 DEFENDANTS will not continue such activity in the future. PLAINTIFF alleges that if
10 DEFENDANTS are not enjoined from the conduct set forth in this Complaint, DEFENDANTS
11 will continue these violations. As a direct and proximate result of the unfair business practices
12 of DEFENDANTS, PLAINTIFF and the Class are entitled to equitable and injunctive relief,
13 including full restitution and/or disgorgement of all wages which have been unlawfully withheld
14 from PLAINTIFF and the Class Members as a result of the business acts and practices described
15 herein and enjoining DEFENDANTS to cease and desist from engaging in the practices
16 described herein for the maximum time permitted pursuant to Business and Professions Code
17 section 17208 including any tolling.

18 87) WHEREFORE, PLAINTIFF for himself and the Class he seeks to represent
19 request injunctive, declaratory, and restitutionary relief as described herein and below.

20 21 **VII. PRAYER FOR RELIEF**

22 Wherefore, PLAINTIFF prays for judgment for herself and the class as follows:

- 23 1. That the court determine that this action may be maintained as a class action with the
24 named plaintiff appointed as class representative;
- 25 2. For the attorneys appearing on the above caption to be named Class Counsel;
- 26 3. For compensatory damages in an amount according to proof with interest thereon;
- 27 4. For economic and/or special damages in an amount according to proof with interest
28 thereon;

5. For a declaratory judgment that each of the Defendants violated the rights of PLAINTIFF and Class under the California Labor Code, and California Business and Professions Code, as set forth in the preceding paragraphs;
6. That DEFENDANTS be found to have engaged in unfair competition in violation of section 17200, et seq. of the Business and Professions Code;
7. That DEFENDANTS be ordered and enjoined to make restitution to PLAINTIFF and the Class Members due to their unfair competition, including disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation, and benefits pursuant to Business and Professions Code section 17203 and 17204;
8. That DEFENDANTS be enjoined from continuing the unlawful course of conduct alleged herein;
9. For declaratory and injunctive relief to PLAINTIFF and the Class Members;
10. For wages, premium pay, and penalties to PLAINTIFF and the Class Members;
11. For attorney fees, interest, and costs of suit;
12. For liquidated damages for failure to pay minimum wages to PLAINTIFF and the Class Members; and
13. For such other and further relief as the Court deems just and proper.

VIII. JURY TRIAL DEMANDED

PLAINTIFF hereby demand trial of his claims and of the Class by jury to the extent authorized by law.

Dated: March 4, 2022

Respectfully submitted,

MALLISON & MARTINEZ



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