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Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV396008
Reviewed By: R. Tien

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

22CV396008

DANIEL R. BLACK, an individual

Plaintiff,

vs.

ECO BOX RECYCLING, INC., a California
Corporation; MY-HANH THI NGUYEN, an
individual, and DOES 1 through 50, inclusive,

Defendants.

CASE NO:

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:

1. UNLAWFUL FAILURE TO PAY ALL
OVERTIME AND DOUBLE TIME WAGES;
2. UNLAWFUL FAILURE TO PAY MINIMUM
WAGES;
3. FAILURE TO PROVIDE OFF-DUTY MEAL
PERIODS;
4. FAILURE TO AUTHORIZE OR PERMIT REST
BREAKS;
5. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS;
6. WAITING TIME PENALTIES;
7. VIOLATION OF BUSINESS AND
PROFESSIONS CODE §§ 17200 ET SEQ.;
8. ENFORCEMENT UNDER THE CALIFORNIA
PRIVATE ATTORNEY GENERAL ACT,
LABOR CODE§ 2698 ET SEQ .

DEMAND FOR JURY TRIAL

1 Plaintiff DANIEL R. BLACK (“Plaintiff”) by and through his undersigned attorney, brings this
2 complaint for causes of action against each of the above named Defendants and states and alleges as
3 follows:
4

5 **I.**
6 **PARTIES, JURISDICTION, AND VENUE**

7 1. Plaintiff Daniel R. Black was, at all relevant times, a citizen of the State of California,
8 County of San Jose. Plaintiff was employed by Defendant Eco Box Recycling, Inc (hereinafter
9 “Defendant” or “Eco Box”) as a driver from approximately August 1, 2017 through approximately April
10 12, 2021 and was an hourly paid non-exempt employee.
11

12 2. Defendant Eco Box is a California corporation licensed to do, and is doing, business in
13 the State of California. At all times relevant times, Defendant Eco Box maintained and maintains its offices
14 at San Jose, California
15

16 3. Plaintiff is informed and believes that Defendant My-Hanh Thi Nguyen (hereinafter
17 “Nguyen”) is and at all times relevant hereto a resident of Santa Clara County and it the sole officer and
18 director of Eco Box. Nguyen directly oversees and controls the operation of Eco Box.

19 4. Plaintiff is currently ignorant of the true names and capacities, whether individual,
20 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1 through
21 50, inclusive, and therefore sue such defendants by such fictitious names. Plaintiff will seek leave to
22 amend this complaint to allege the true names and capacities of said fictitiously named defendants when
23 their true names and capacities have been ascertained. Plaintiff is informed and believes and thereon
24 alleges that each of the fictitiously named defendants is legally responsible in some manner for the events
25 and occurrences alleged herein, and for the damages suffered by the Plaintiff.
26

27 5. Plaintiff is informed and believes, and on that basis alleges, that Defendants DOES 1
28 through 50 are, and at all times relevant hereto were, persons, corporations or other business entities

1 organized and existing under and by virtue of the laws of the State of California, and are/were qualified
2 to transact and conduct business in the State of California, and did transact and conduct business in the
3 State of California, and are thus subject to the jurisdiction of the State of California. Specifically, DOES
4 1 through 50 maintain offices, operate businesses, employ persons, conducts business in, and illegally pay
5 employees by illegal payroll practices and policies in the State of California.
6

7 6. Plaintiff is informed and believes and thereon alleges that all defendants, including the
8 fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents,
9 partners and/or joint venturers and/or employees of all other defendants, and that all acts alleged herein
10 occurred within the course and scope of said agency, employment, partnership, and joint venture,
11 conspiracy or enterprise, and with the express and/or implied permission, knowledge, consent
12 authorization and ratification of their co-defendants; however, each of these allegations are deemed
13 "alternative" theories whenever not doing so would result in a contradiction with other allegations. All
14 actions of each Defendant alleged herein were ratified and approved by the other Defendants and/or their
15 officers or managing agents.
16
17

18 7. Plaintiff is informed, believes and thereon alleges that there exists, and at all times
19 relevant hereto, existed, a unity of interest and ownership between Eco Box, on the one hand, and Nguyen
20 on the other hand, such that any individuality and separateness between Eco Box, on the one hand, and
21 Nguyen on the other hand does not exist. Plaintiff is further informed, believes and thereon alleges that
22 the lack of individuality and separateness between Eco Box, and Nguyen is such that Nguyen is the alter
23 ego of Eco Box and Eco Box is a mere shell, instrumentality and conduit through which Nguyen carries
24 on his business, intermingling his business and personal affairs to such an extent that any individuality or
25 separateness of Eco Box and Nguyen does not, and at all times relevant hereto, did not exist, the activities
26
27
28

1 and business of Box and Nguyen were carried out without proper records thereof and observing other
2 corporate formalities.

3 8. Plaintiff is informed and believes and thereon alleges that adherence to the fiction of the
4 separate existence of those entities as an entity distinct from Nguyen would permit an abuse of the
5 corporate privilege and would sanction fraud and promote injustice in that Eco Box may be unable to meet
6 their lawful obligations to Plaintiff.
7

8 9. Plaintiff is informed and believes, and on that basis alleges, that at all times herein
9 mentioned, one or more of each named and/or unnamed defendant(s) was the alter-ego of one or more of
10 the remaining named and/or unnamed defendant(s), and as hereinafter alleged, was acting for their own
11 benefit and/or the benefit of one or more of the remaining named and/or unnamed defendant(s).
12

13 10. Defendants Eco Box, Nguyen and Does 1 through 50, shall be referred to as
14 “Defendants”.

15 11. The wrongful conduct alleged against the Defendants, and each of them, occurred in the
16 County of San Jose, State of California.
17

18 12. The Court has personal jurisdiction over Defendants because they are residents of and/or
19 doing business in the State of California.

20 13. Venue is proper in this Court in accordance with Section 395(a) of the California Code of
21 Civil Procedure because Defendants, or some of them, reside in San Jose County. Moreover, Defendants
22 employed Plaintiff in San Jose County and the harms occurred in San Jose County.
23

24 **FACTS COMMON TO ALL CAUSES OF ACTION**

25 14. Defendant Eco Box is a debris box rental business which provides debris hauling services
26 throughout Northern California.

27 15. At all times during the liability period, Plaintiff worked in excess of eight (8) hours per
28 work day or forty (40) hours per work week. Defendants failed to pay for hours worked in excess of eight

1 (8) hours per day. Defendant failed to pay Plaintiff one-and-one-half times his regular rate of pay for hours
2 worked in excess of eight (8) hours per day or forty (40) hours per workweek. Defendant also failed to
3 pay their employees at a rate no less than twice the regular rate of pay for work in excess of twelve (12)
4 hours in one day or for all hours worked in excess of eight (8) hours on the seventh consecutive day of
5 work in a workweek.
6

7 16. At all times during the liability period, Plaintiff was assigned to and required to work for
8 periods lasting in excess of five (5) hours and was not provided or allowed to take a thirty (30) minute,
9 uninterrupted, off-duty meal break. Moreover, Plaintiff often worked and in excess of ten (10) hours
10 without a second thirty (30) minute meal break.
11

12 17. At all times during the liability period, Defendants automatically deducted at least 30
13 minutes from Plaintiff's hours worked each workday for a meal break that was not taken.
14

15 18. At all times during the liability period, Plaintiff was assigned to and required to work
16 shifts lasting over four (4) hours, and was not provided nor allowed to take a ten (10) minute, uninterrupted
17 rest break during each such shift or four (4) hour work period.
18

19 19. At all times during the liability period, Defendant failed to authorize and permit rest
20 breaks. Plaintiff was routinely required to work through rest periods at the direction of Defendants and/or
21 with Defendant's' knowledge and acquiescence.
22

23 20. At all times during the liability period, Defendants failed to pay Plaintiff for all hours
24 worked. Thus, Defendants did not pay Plaintiff minimum wages in accordance with law and, because
25 Plaintiff worked shifts over eight (8) hours in duration and because Defendants automatically deducted
26 time from Plaintiff's pay for non-compliant meal breaks, Defendant did not pay overtime wages in
27 accordance with the law.
28

FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME
WAGES

(Against All Defendants and DOES 1 through 50 Inclusive)

21. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

22. Section 510 of the Labor Code provides that, "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee "

23. The applicable IWC Wage Order also mandates that employers pay one and one-half times the employees' regular rate of pay for employees who work more than eight (8) hours in a day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess of twelve (12) hours in one day.

24. At all times relevant hereto, Plaintiff was non-exempt for purposes of the overtime and double pay requirements set forth in the Labor Code and the applicable IWC Wage Order.

25. Throughout Plaintiff's employment with Defendants, Plaintiff routinely worked in excess of eight (8) hours in a single day, and/or in excess of ten (10) hours in a single day, and/or in excess of forty (40) hours in a single week.

26. Throughout Plaintiff's employment with Defendants, Defendants failed to compensate Plaintiff daily overtime wages for all hours Plaintiff worked in excess of eight hours in a day.

27. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of overtime wages in an amount to be determined at trial, and is entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§1194, 1199; Code of Civil

1 Procedure §1021.5; and Civil Code §3287.

2 28. Pursuant to Labor Code section 558.1, Defendant Nguyen, who is an owner, director,
3 officer, or managing agent of the corporate Defendants, is liable as the employer for such violation.
4

5 **SECOND CAUSE OF ACTION**

6 **UNLAWFUL FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME**

7 **WAGES**

8 **(Against All Defendants and DOES 1 through 50 Inclusive)**

9 29. Plaintiff realleges and incorporates by reference all of the allegations contained in the
10 preceding paragraphs of this Complaint as though fully set forth herein.

11 30. Labor Code § 510 provides in relevant part: "[e]ight hours of labor constitutes a day's
12 work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in any one
13 workweek and the first eight hours worked on the seventh day of work in any one workweek shall be
14 compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.
15 Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
16 regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day
17 of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
18 employee."
19

20
21 31. Labor Code § 1197 provides: "The minimum wage for employees fixed by the
22 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
23 minimum so fixed is unlawful."

24 32. Labor Code§ 1194, subdivision (a) provides: "Notwithstanding any agreement to work
25 for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
26 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
27 the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
28 attorney's fees, and costs of suit."

1 33. Labor Code§ 1194.2 provides in relevant part: "In any action under Section 1193.6 or
2 Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by
3 an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
4 equal to the wages unlawfully unpaid and interest thereon."

5
6 34. Pursuant to the applicable IWC Wage Order, at all times material hereto, "hours worked"
7 includes "the time during which an employee is subject to the control of an employer, and includes all
8 the time the employee is suffered or permitted to work, where or not required to do so."

9
10 35. At all times relevant during the liability period, Defendants automatically deducted time
11 from Plaintiff's hours worked for non-complaint meal breaks. Plaintiff should have received not less
12 than the minimum wage in a sum according to proof for the time worked, but not compensated.

13 36. For all hours that Plaintiff worked, he is entitled to not less than the California minimum
14 wage and, pursuant to Labor Code§ 1194.2(a) liquidated damages in an amount equal to the unpaid
15 minimum wages and interest thereon. Pursuant to Labor Code § 1194, Plaintiff is also entitled to his
16 attorneys' fees, costs and interest according to proof.

17
18 37. Pursuant to Labor Code section 558.1, Defendant Nguyen, who is an owner, director,
19 officer, or managing agent of the corporate Defendants, is liable as the employer for such violation.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS**

22 **(Against All Defendants and DOES 1 through 50 Inclusive)**

23 21. Plaintiff realleges and incorporates by reference all of the allegations contained in the
24 preceding paragraphs of this Complaint as though fully set forth herein.

25 22. California Labor Code§ 226.7(a) provides, "No employer shall require any employee to
26 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
27 Commission."

28 23. The applicable IWC Wage Order provides, in relevant part: "No employer shall employ

1 any person for a work period of more than five (5) hours without a meal period of not less than 30
2 minutes, except that when a work period of not more than six (6) hours will complete the day's work the
3 meal period may be waived by mutual consent of the employer and the employee."

4
5 24. Section 512(a) of the California Labor Code provides, in relevant part, that: "An
6 employer may not employ an employee for a work period of more than five hours per day without
7 providing the employee with a meal period of not less than 30 minutes, except that if the total work
8 period per day of the employee is no more than six hours, the meal period may be waived by mutual
9 consent of both the employer and employee. An employer may not employ an employee for a work
10 period of more than 10 hours per day without providing the employee with a second meal period of not
11 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the employee only if the first meal period
13 was not waived."
14

15 25. Labor Code section 226.7 (b) provides that if an employee fails to provide an employee
16 a meal period or rest period in accordance with an applicable order of the Industrial Welfare
17 Commission, the employer shall pay the employee one additional hour of pay at the employee's regular
18 rate of compensation for each work day that the meal period or rest period is not provided.
19

20 21. Plaintiff has regularly worked in excess of five (5) hours a day without being provided
21 at least a thirty (30) minute meal period in which he was relieved of all duties, as required by Labor
22 Code sections 226.7 and 512 and the applicable IWC Wage Order.
23

24 22. Defendants failed to provide Plaintiff with off duty meal periods as provided in Labor
25 Code sections 226.7 and 512 by failing to relieve Plaintiff of all duty, relinquish control over Plaintiff's
26 activities and permit a reasonable opportunity to take an uninterrupted 30-minute meal break, and failed
27 to pay Plaintiff the additional pay at the Plaintiff's regular rate of compensation for each work day in
28 lieu of providing the off-duty meal period.

1 23. As alleged herein, Defendants failed to authorize and permit uninterrupted meal breaks
2 during the relevant period. Plaintiff was routinely required to work without an uninterrupted meal break
3 at the direction of Defendants and/or with Defendants' knowledge and acquiescence

4 24. Defendants also automatically deducted time from Plaintiff's pay despite the fact that
5 Plaintiff was not provided with lawful meal breaks.
6

7 25. By its actions in requiring its employees to work through meal periods and/or its failure
8 to relieve Plaintiff of his duties for his off-duty meal periods, Defendants have violated California Labor
9 Code§ 226.7 and the applicable IWC Wage Order, and are liable to Plaintiff.
10

11 26. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of timely off-
12 duty meal periods, and is entitled to recovery under Labor Code§ 226.7(b) and the applicable IWC Wage
13 Order, in the amount of one additional hour of pay at the employee's regular rate of compensation for
14 each work period during each day in which Defendant failed to provide Plaintiff with timely statutory
15 off-duty meal periods.
16

17 21. As a result of Defendants' failure to comply with their obligations under Labor Code
18 sections 512 and 226.7 and the applicable Wage Order and due to Defendant's automatic deduction of
19 time from Plaintiff's pay for non-compliant meal breaks, Plaintiff is entitled to his regular rate of pay or
20 his overtime rate of pay for the time Defendants automatically deducted.

21 22. Pursuant to Labor Code section 218.6, Plaintiff is entitled to recover prejudgment interest
22 on the amount of the additional pay owed.
23

24 23. Pursuant to Labor Code section 558.1, Defendant Nguyen, who is an owner, director,
25 officer, or managing agent of the corporate Defendants, is liable as the employer for such violation.
26

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE OR PERMIT REST PERIOD BREAKS

(Against All Defendants and DOES 1 through 50 Inclusive)

28 24. Plaintiff realleges and incorporates by reference all of the allegations contained in the

preceding paragraphs of this Complaint as though fully set forth herein.

25. California Labor Code § 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

26. The applicable IWC Wage Order provides, in relevant part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work times is less than three and one-half hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

27. The applicable IWC Wage Order further provides, "If an employer fails to provide an employee with a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

21. Plaintiff has regularly worked in excess of three and one-half (3 ½) hours a day without being permitted to take at least a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof, as required by IWC wage order No. 9, section 12 and Labor Code section 226.7.

22. As alleged herein, Defendant failed to authorize and permit rest breaks during the relevant period. Plaintiff was routinely required to work through rest periods at the direction of Defendants and/or with Defendants' knowledge and acquiescence.

23. By their actions in requiring their employees during the relevant period to work through rest periods, Defendant violated California Labor Code § 226.7 and the applicable IWC Wage Order, and is liable to Plaintiff in the amount of one additional hour of pay at his regular rate of compensation

1 for each work period during each day in which Defendant failed to authorize and permit Plaintiff with a
2 lawful rest break.

3 38. As a result of Defendants' failure to comply with their obligations under Labor Code
4 section 226.7 and the applicable Wage Orders, Plaintiff has suffered damages in an amount, subject to
5 proof, to the extent he was not paid additional pay owed for Defendants' failure to provide rest periods
6 as required by the law.
7

8 39. By violating Labor Code section 226.7 and the applicable IWC Wage Order, Defendants
9 are also liable for interest under Labor Code section 218.6 and civil penalties under Labor Code section
10 558.
11

12 40. Pursuant to Labor Code section 558.1, Defendant Nguyen, who is an owner, director,
13 officer, or managing agent of the corporate Defendants, is liable as the employer for such violation.
14

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(Against All Defendants and DOES 1 through 50 Inclusive)**

18 41. Plaintiff realleges and incorporates by reference all of the allegations contained in the
19 preceding paragraphs of this Complaint as though fully set forth herein.
20

21 42. At all relevant times, Plaintiff was an employee of Defendants covered by Labor Code §
22 226.
23

24 43. California Labor Code§ 226(a) provides: "Every employer shall, semimonthly or at the
25 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
26 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
27 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
28 worked by the employee ... , (3) the number of piece-rate units earned and any applicable piece rate if
the employee is paid on a piece-rate basis, (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, (6) the

1 inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or
2 her social security number, except that by January 1, 2008, only the last four digits of his or her social
3 security number or an employee identification number other than a social security number may be shown
4 on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all
5 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
6 at each hourly rate by the employee."

8 44. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the initial
9 pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period, as well as an
10 award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and
11 intentionally failed to provide accurate itemized statements to the employee causing the employee to
12 suffer injury.

14 45. Plaintiff is informed, believes and thereon alleges that at all times relevant, Defendant
15 knowingly and intentionally failed to furnish Plaintiff with timely and accurate itemized statements
16 showing the gross wages earned by Plaintiff, total hours worked, net wages earned, wages for missed
17 meal and rest breaks, and all applicable hourly rates in effect during the pay period and the corresponding
18 number of hours worked at each hourly rate by the Plaintiff, as required by Labor Code § 226 (a).

20 46. Defendants' failure to provide Plaintiff with accurate itemized wage statements during
21 the relevant period has caused Plaintiff to incur economic damages in that he was not aware that he was
22 owed and not paid compensation for missed rest periods and on-duty meal periods, for hours worked
23 without pay, and for overtime worked without pay. In addition, as set forth in Plaintiff third cause of
24 action, Defendant provided inaccurate information regarding hours worked, which masked their
25 underpayment of wages to Plaintiff

27 47. California Labor Code § 226(e) provides that any employee suffering injury due to a
28 willful violation of the aforementioned obligations may collect the greater of either actual damages or

1 \$50 for the first inadequate pay statement and \$100 for each inadequate statement thereafter, not to
2 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
3 reasonable attorney's fees.

4 48. Pursuant to Labor Code §§ 226(e) and 226(g), Plaintiff is entitled to recover the full
5 amount of penalties due under Labor Code § 226(e) reasonable attorneys' fees and costs of suit.

6 49. Pursuant to Labor Code section 558.1, Defendant Nguyen, who is an owner, director,
7 officer, or managing agent of the corporate Defendants, is liable as the employer for such violation.
8

9
10 **SIXTH CAUSE OF ACTION**
11 **WAITING TIME PENALTIES**

12 **(Against All Defendants and DOES 1 through 50 Inclusive)**

13 49. Plaintiff realleges and incorporates by reference all of the allegations contained in the
14 preceding paragraphs of this Complaint as though fully set forth herein.

15 50. Defendants willfully failed to pay Plaintiff all wages owed to him, including, minimum
16 wages and overtime compensation for all hours worked, wages for failing to provide statutory off duty
17 meal periods and wages for failing to authorize and permit statutory rest periods within the time limits
18 set forth in California Labor Code sections 201 and 202.

19 51. More than 30 days have passed since Plaintiff has left Defendants' employ.

20 52. Defendants' failure to pay Plaintiff all wages earned prior to termination in accordance
21 with Labor Code §§ 201 and 202 was willful. Defendants had the ability to pay all wages earned by
22 Plaintiff at the time of termination in accordance with Labor Code §§ 201 and 202, but intentionally
23 adopted policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

24 53. Pursuant to Labor Code §§ 201 and 202 Plaintiff is entitled to all wages earned prior to
25 termination that Defendants failed to pay him.

26 54. Pursuant to Labor Code § 203, Plaintiff is entitled to penalty wages from the date his
27 earned and unpaid wages were due, upon termination, until paid, up to a maximum of 30 days.
28

55. As a result of Defendants' unlawful conduct Plaintiff has suffered damages in an amount subject to proof, to the extent he was not paid for all wages earned prior to termination.

56. As a result of Defendants' unlawful conduct Plaintiff has suffered damages in an amount subject to proof, to the extent he was not paid all penalty wages owed under Labor Code § 203.

57. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff is entitled to recover the full amount of his unpaid wages, and penalty wages under Labor Code § 203, reasonable attorneys' fees, and costs of suit.

58. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff is entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

59. Pursuant to Labor Code section 558.1, Defendant Nguyen, who is an owner, director, officer, or managing agent of the corporate Defendants, is liable as the employer for such violation.

SEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT

(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)

Against All Defendants and DOES 1 through 50 Inclusive

60. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

61. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business & Professions Code § 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the state of California that comply with their obligations to compensate employees in accordance with the Labor Code

62. Defendants have violated and continue to violate Business & Professions Code, section 17200, et seq. by engaging in acts of unfair competition referred to above including, but not limited to, the following:

- 1 a. Failure to pay Plaintiff for all hours worked, including minimum wage and overtime
2 compensation;
3
4 b. Failure to provide Plaintiff with off-duty meal breaks in violation of Labor Code §§
5 226.7, 512 and applicable Industrial Welfare Commission Orders.
6
7 c. Failure to provide Plaintiff with rest breaks in violation of Labor Code § 226.7 and
8 applicable Industrial Welfare Commission Orders.
9
10 d. Failure to pay Plaintiff all wages earned and owing at the time of his separation from
11 employment as required by Labor Code §§ 201 and 202;
12
13 e. Failure to provide Plaintiff with an accurate itemized written statement as required
14 by Labor Code § 226;

15 63. Pursuant to Business & Professions Code, section 17203, Plaintiff is entitled to restitution
16 of all wages and other moneys owed and belonging to him, including interest thereon that Defendants
17 wrongfully withheld from him and retained for themselves by means of their unlawful and unfair
18 business practices.

19 64. Pursuant to Business & Professions Code, section 17203, Plaintiff is entitled to injunctive
20 relief to prevent the continuance of Defendants' unlawful and unfair business practices.

21 65. Plaintiff is entitled to recover reasonable attorneys' fees pursuant to Code of Civil
22 Procedure, section 1021.5, the substantial benefit doctrine, and or the common fund doctrine.

23 **EIGHTH CAUSE OF ACTION**
24 **ENFORCEMENT UNDER THE CALIFORNIA PRIVATE ATTORNEY GENERAL ACT,**
25 **Labor Code§ 2698 et seq**
26 **Plaintiff Against All Defendants and DOES 1 through 50 Inclusive**

27 66. Plaintiff realleges and incorporates by reference all of the allegations contained in the
28 preceding paragraphs of this Complaint as though fully set forth herein.

1 67. Plaintiff submits this Complaint to include allegations pursuant to Labor Code §§2698
2 et seq. PAGA, in Labor Code Section 2699.3(a)(2)(C), provides that, notwithstanding any other
3 provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of
4 action arising under §§ 2699 et seq.

5
6 68. Under California's Private Attorneys General Act (PAGA), an "aggrieved employee"
7 may bring a civil action and on "behalf of himself or herself or other current or former employees" to
8 recover civil penalties for Labor Code violations. Cal. Lab.Code § 2699.

9
10 69. Plaintiff is an aggrieved employee as defined in Labor Code§ 2699(a). Plaintiff bring
11 this Cause of Action on behalf of himself and on behalf of the current and former employees of the
12 Defendants affected by the violations alleged in this Complaint.

13 70. Labor Code § 2699(f) provides: For all provisions of this code except those for which
14 a civil penalty is specifically provided, there is established a civil penalty for a violation of these
15 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
16 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
17 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
18 each subsequent violation.

19
20 71. Plaintiff seeks civil penalties pursuant to Labor Code§ 2699(f) for Plaintiff and each
21 member of the Plaintiff Class he seeks to represent for each pay period in which he or she was
22 aggrieved, in the amounts established by Labor Code § 2699(f)

23
24 72. Plaintiff seeks penalties based upon the factual allegations of this Complaint and the
25 letters sent to the Labor and Workforce Development Agency and allegations related to those
26 allegations.

27 73. Plaintiff seeks penalties on behalf of himself, and all other aggrieved employees, and
28 the State, as provided by Labor Code § 2699(i).

74. As a direct result of Defendants' conduct as described, Plaintiff is entitled to recover from Defendants, on their own behalf and on behalf of others similarly situated, the maximum civil penalties permitted by the Private Attorneys General Act for all violations of Labor Code sections, including but not limited to, 201-203, 226, 226.3 (e), 226.3, 558, 1199, as well as reasonable attorney's fees, interest and costs.

75. Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698-2699.5 ("PAGA"), on March 2, 2022, Plaintiff provided written notice by certified mail to the Labor & Workforce Development Agency ("LWDA") and to Defendants of the legal claims and theories of this case.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For all unpaid minimum wages and liquidated damages due to Plaintiff and on his minimum wage claim;
2. For all unpaid overtime wages due to Plaintiff;
3. For one hour of wages due to Plaintiff for each work period of more than four (4) hours when he did not receive an uninterrupted ten (10) minute rest period;
4. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when he did not receive an uninterrupted thirty (30) minute meal period;
5. For statutory penalties under Labor Code § 226(e);
6. Damages for unpaid penalty wages under Labor Code § 203;
7. Restitution under Business and Professions Code § 17203
8. For an award of interest, including prejudgment interest and post judgment interest, at the legal rate;

- 1 9. Costs of suit;
- 2 10. Attorneys' fees pursuant to the law;
- 3 11. For all penalties provided by Labor Code §2699(a)-(f); and,
- 4 12. Such other and further relief as the Court deems just and proper.
- 5

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demand a jury trial as provided by § 631 of the California Code of Civil

8 Procedure.

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10 DATED: March 7, 2022

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12 By: Morris Nazarian

13 MORRIS NAZARIAN

14 Attorneys for Plaintiff

15 **DANIEL R. BLACK**

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