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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JULIAN MENDOZA PADILLA behalf of
himself and all others similarly situated,

Plaintiff,

vs.

NISSHO OF CALIFORNIA, INC., a California
Corporation, and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2022-00012006-CU-OE-CTL

ASSIGNED FOR ALL PURPOSES TO:

Judge: Hon. Carolyn Caietti

Dept.: C-70

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- 1) Failure to Pay Lawful Wages**
- 2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof**
- 3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof**
- 4) Failure to Reimburse Employee Expenses**
- 5) Failure to Timely Pay Wages During Employment**
- 6) Failure to Timely Pay Wages At Termination**
- 7) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions**
- 8) Violations of the Unfair Competition Law**
- 9) Labor Code Private Attorneys General Act (Lab. Code § 2699 *et seq.*)**

JURY TRIAL DEMANDED

1 Plaintiff Julian Mendoza Padilla, on behalf of himself and all others similarly situated, asserts
2 claims against Defendant Nissho of California, Inc.; and DOES 1 through 50, inclusive (hereafter
3 collectively referred to as “Defendants”) as follows:

4 I. INTRODUCTION

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
6 against Defendant Nissho of California, Inc. and any subsidiaries and affiliated companies
7 (hereinafter “Nissho” or “Defendant”) on behalf of Plaintiff Julian Mendoza Padilla (hereinafter
8 “Plaintiff”) and all employees not classified as “Exempt” or primarily employed in executive,
9 professional, or administrative capacities, employed by, or formerly employed by Nissho in
10 California who occupied positions of “irrigation technician” or similar landscape laborer positions
11 (hereinafter referred to as “Non-Exempt Employees” or “Class Members”).

12 2. During the liability period, defined as the applicable statute of limitations for each
13 and every cause of action contained herein, Defendant enforced shift schedules, employment policies
14 and practices, and workload requirements wherein Plaintiff and all other Non-Exempt Employees:
15 (1) were not paid proper wages they earned for all hours they worked, including proper overtime
16 compensation; (2) were not permitted to take their full statutorily authorized rest and meal periods.
17 Defendant failed to pay such employees one (1) hour of pay at the employees’ regular rate of
18 compensation for each workday that the meal period and/or rest period was not properly provided.

19 3. During the liability period, Defendant has failed to reimburse Plaintiff and Non-
20 Exempt Employees for business expenses incurred in the performance of their job.

21 4. During the liability period, Defendant has also failed to timely pay all wages owed to
22 Non-Exempt Employees during their employment and/or when their employment with Defendant
23 terminated.

24 5. During the liability period, Defendant also failed to maintain accurate itemized
25 records reflecting total hours worked and have failed to provide Non-Exempt Employees with
26 accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for
27 those hours worked.

28 6. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant to

1 Labor Code sections 201, 202, 203, 204, 221, 225, 226, 226.7, 510, 512, 1194, 1199, 2802
2 California Code of Regulations, Title 8, section 11050 *et seq.* and any other applicable Industrial
3 Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal
4 period compensation, reimbursement of required expenses, penalties and other equitable relief, and
5 reasonable attorneys’ fees and costs.

6 7. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and
7 Professions Code sections 17200-17208, also seeks restitution from Defendant for their failure to
8 pay all wages owed and rest and meal period premiums to each of their Non-Exempt Employees.

9 II. VENUE

10 8. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil
11 Procedure section 395. Defendant conducts substantial and continuous commercial activities and has
12 its headquarters in San Diego County and each Defendant is within the jurisdiction of this Court for
13 service of process purposes. Defendant employs numerous Class Members in San Diego, California.

14 III. PARTIES

15 9. Plaintiff is, and at all times mentioned in this complaint was, a resident of California.

16 10. On information and belief, Nissho is a California corporation which is engaged in
17 providing landscape services throughout California.

18 11. The true names and capacities of Defendants, whether individual, corporate,
19 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
20 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
21 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
22 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
23 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names
24 and capacities of the Defendants designated hereinafter as DOES when such identities become
25 known.

26 12. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in
27 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
28 business plan or policy in all respects pertinent hereto, and the acts of each of the Defendants are

1 legally attributable to the other Defendants.

2 **IV. FACTUAL BACKGROUND**

3 13. Plaintiff was employed by Nissho as an irrigation technician laborer and occupied
4 said non-exempt, hourly position until the last day of his employment on or about July 16, 2021.

5 14. On information and belief, Defendant compensated Plaintiff and Class Members
6 based upon an hourly rate.

7 15. During the relevant time period, Plaintiff and Class Members typically worked five
8 days a week. During their scheduled workdays, Plaintiff and Class Members were typically
9 scheduled to work eight (8) hour shifts from 6:00 a.m. to 2:30 p.m. However, at various times these
10 shifts would be scheduled for longer than eight (8) and/or ten (10) hours.

11 16. During the relevant time period, Nissho implemented policies and practices which
12 resulted in Plaintiff and Non-Exempt Employees working off the clock and without compensation.
13 By way of example, Plaintiff and Non-Exempt Employees were required to arrive at Defendant's
14 yard/facility fifteen to thirty minutes before the scheduled start of their shift to get instructions from
15 the supervisor, review paperwork, gather supplies, and/or load equipment. From the yard, the
16 employees were transported to the various job sites of Defendant's clients. Plaintiff and Class
17 Members were also required to continue to work past the official end of the shift after returning to
18 the yard/facility, such as completing paperwork, readying tools, and prepping for the next day.
19 Plaintiff and Class Members are not compensated for the time spent under the control of Defendant
20 and working "off the clock" and therefore are not paid all lawful wages earned including proper
21 minimum wage and/or overtime compensation.

22 17. During the relevant time period, Plaintiff and Non-Exempt Employees were/are
23 instructed by supervisors when to take their meal breaks. Due to the demands of the work shift and
24 time constraints to finish the job, Plaintiff and Non-Exempt Employees were frequently required to
25 work in excess of five (5) hours without a minimum, uninterrupted thirty (30) minute meal period by
26 the end of the fifth hour of their shift. Plaintiff and Non-Exempt Employees were also not provided a
27 second uninterrupted thirty (30) minute meal period for shifts in excess of ten (10) hours. Plaintiff
28 and Non-Exempt Employees were not paid one (1) hour of pay at their regular rate of compensation

1 for each workday that a meal period was not provided, in violation of California labor laws,
2 regulations and IWC Wage Order.

3 18. During the relevant time period, Plaintiff and Class Members were required to work
4 without being permitted or authorized a minimum ten (10) minute rest period for every four hours or
5 major fraction thereof worked and not compensated one (1) hour of pay at their regular rate of
6 compensation for each workday that a rest period was not provided, in violation of California labor
7 laws, regulations, and IWC Wage Orders.

8 19. On information and belief, during the relevant time period, Defendant failed to
9 reimburse Plaintiff and Class Members for the use of personal phones in the performance of their job
10 duties. Plaintiff and Class Members were contacted on their phones regarding any shift changes.
11 Plaintiff and Class Members were also required to use their personal phones to use the required
12 Nissho application. Additionally, Plaintiff and Class Members were required to purchase their own
13 work equipment such as safety vests, knee pads and certain tools required in the performance of their
14 job duties for which they were not reimbursed.

15 20. On information and belief, Defendant willfully failed to pay all earned wages in a
16 timely manner to Non-Exempt Employees during their employment, and at the termination of their
17 employment, all compensation due, including but not limited to all wages owed and compensation
18 for having failed to properly provide rest periods and meal periods.

19 21. Defendant has also failed to maintain accurate itemized records reflecting total hours
20 worked and have failed to provide Non-Exempt Employees with accurate, itemized wage statements
21 reflecting total hours worked and appropriate rates of pay for those hours worked.

22 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant currently
23 employs and during the relevant period have employed over one hundred (100) Non-Exempt
24 Employees in California.

25 23. Non-Exempt Employees employed by Nissho, at all times pertinent hereto, have been
26 non-exempt employees within the meaning of the California Labor Code, and the implementing
27 rules and regulations of the IWC California Wage Orders.
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25. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

b. All persons who are or were employed by Nissho in the state of California as hourly non-exempt employees and who occupied positions of “landscape laborer” and similar positions who, within the liability period, have not been provided compliant 30-minute meal period when they worked over five hours in a work shift by the end of the fifth hour and were not provided compensation in lieu thereof;

d. All persons who are or were employed by Nissho in the state of California as hourly non-exempt employees and who occupied positions of “landscape laborer”, “irrigation technician”, and similar positions who, within the liability period, were not reimbursed by for their expenses required in the performance of their job duties, from Defendant;

e. All persons who are or were employed by Nissho in the state of California as hourly non-exempt employees and who occupied positions of “landscape laborer”, “irrigation

1 technician”, and similar positions who, within the liability period, were not timely paid all wages due
2 and owed to them during their employment with Defendant;

3 f. All persons who are or were employed by Nissho in the state of California as
4 hourly non-exempt employees and who occupied positions of “landscape laborer”, “irrigation
5 technician”, and similar positions who, within the liability period, were not timely paid all wages due
6 and owed to them upon the termination of their employment with Defendant; and

7 g. All persons who are or were employed by Nissho in the state of California as
8 hourly non-exempt employees and who occupied positions of “landscape laborer”, “irrigation
9 technician”, and similar positions who, within the liability period, were not provided with accurate
10 and complete itemized wage statements.

11 26. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
12 modify the class description with greater specificity or further division into subclasses or limitation
13 to particular issues.

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

17 **A. Numerosity**

18 28. The potential members of the Class as defined are so numerous that joinder of all the
19 members of the Class is impracticable. While the precise number of Class Members has not been
20 determined at this time, Plaintiff is informed and believes that Defendants currently employ, and/or
21 during the relevant time period employed, approximately over 100 Non-Exempt Employees in
22 California who are or have been affected by Defendant’s unlawful practices as alleged herein.

23 **B. Commonality**

24 29. There are questions of law and fact common to the Class predominating over any
25 questions affecting only individual Class Members. These common questions of law and fact
26 include, without limitation:

27 a. Whether Defendant violated Labor Code sections 510, 1194 and applicable IWC
28 Wage Orders by failing to pay all earned wages including overtime compensation to Non-Exempt

1 Employees who worked in excess of eight (8) hours in a workday and/or more than forty (40) hours
2 in a workweek;

3 b. Whether Defendant also violated Labor Codes sections 200, 1194, and 1197 for
4 failing to pay minimum wages for time spent under the Defendant's control and working "off the
5 clock" without pay;

6 c. Whether Defendant violated Labor Code sections 226.7, 512 and applicable IWC
7 Wage Order by failing to provide statutorily compliant 30-minute meal periods to Non-Exempt
8 Employees on days in which they worked in excess of 5 hours and failing to compensate said
9 employees one hour of wages in lieu of meal periods;

10 d. Whether Defendant violated Labor Code sections 226.7 and applicable IWC Wage
11 Orders by failing to authorize and permit minimum 10-minute rest periods to Non-Exempt
12 Employees for every four hours or major fraction thereof worked and failing to compensate said
13 employees one hour of wages in lieu of rest periods;

14 e. Whether Defendant violated Labor Code section 2802 and applicable IWC Wage
15 Orders for failing to indemnify employees for the expenditures incurred in the performance of their
16 job duties (i.e., requiring that Class Members to use their personal phones in the performance of their
17 job duties, Class Members having to purchase their own equipment);

18 f. Whether Defendants violated section 204 of the Labor Code and applicable IWC
19 Wage Orders by failing to pay all earned wages and/or premium wages due and owed during the
20 Non-Exempt Employees' employment with Defendant;

21 g. Whether Defendant violated sections 201-203 of the Labor Code by failing to pay all
22 earned wages and/or premium wages due and owing at the time that any Class Members'
23 employment with Defendant terminated;

24 h. Whether Defendant violated sections 226 of the Labor Code and applicable IWC
25 Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt
26 Employees' earned wages, work periods, meal periods and deductions;

27 i. Whether Defendant violated section 17200 *et seq.* of the Business and Professions
28 Code by failing to pay proper minimum and/or overtime wages to Non-Exempt Employees; failing

1 to provide proper rest and/or meal periods and failing to pay compensation in lieu thereof; failing to
2 reimburse employee expenses; failing to timely pay wages due and owing during their employment
3 and/or at the time the employee's employment with Defendant terminated failing to keep accurate
4 records all in violation of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1199,
5 2802 and applicable IWC Wage Orders;

6 j. Whether Defendant violated section 17200 *et seq.* of the Business and Professions
7 Code and Labor Code sections §§ 201, 202, 203, 204, 221, 225, 226, 226.7, 510, 512, 1194, 1199,
8 2802 and applicable IWC Wage Orders which violation constitutes a violation of fundamental public
9 policy.

10 **C. Typicality**

11 30. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and
12 all members of the Class sustained injuries and damages arising out of and caused by Defendant's
13 common course of conduct in violation of California laws, regulations, and statutes as alleged
14 herein.

15 **D. Adequacy of Representation**

16 31. Plaintiff will fairly and adequately represent and protect the interests of the members
17 of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large
18 employment class actions.

19 **E. Superiority of Class Action**

20 32. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
22 questions of law and fact common to the Class predominate over any questions affecting only
23 individual members of the Class. Each member of the Class has been damaged and is entitled to
24 recovery by reason of Defendant's unlawful policy and/or practice herein complained of.

25 33. Class action treatment will allow those similarly situated persons to litigate their
26 claims in the manner that is most efficient and economical for the parties and the judicial system.
27 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
28 action that would preclude its maintenance as a class action.

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VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Including Minimum and/or Overtime Wages
(Labor Code §§510, 1194, 1199)
(Against All Defendants)

34. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

35. During the liability period, Defendant's policies, practices, and/or work shift requirements resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including overtime in violation of California state wage and hour laws.

36. During the liability period, Defendant's policies, practices, and/or work shift requirements resulted in Plaintiff and Non-Exempt Employees working in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

37. During the liability period, Defendant's policies, practices, and/or work shift requirements resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent under Defendant's control and working off the clock while subject to the control of Defendant, all without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked and the payment of a lesser wage than the established minimum is unlawful.

38. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

Second Cause of Action

Failure to Provide Lawful Meal Periods
or Compensation in Lieu Thereof
(Labor Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

39. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

40. By their failure to provide 30-minute uninterrupted meal periods by the end of the

1 fifth hour for days on which Non-Exempt employees work(ed) periods in excess of 5 hours and/or a
2 second compliant uninterrupted 30-minute meal period by the end of the tenth hour on days in which
3 they worked in excess of 10 hours and failing to provide compensation for such statutorily non-
4 compliant meal periods, Defendant violated the provisions of Labor Code §512 and applicable IWC
5 Wage Orders.

6 41. By failing to record and maintain adequate and accurate time records according to
7 sections 226 and 1174 (d) of the Labor Code, Defendant has injured Plaintiff and Class Members
8 and made it difficult to calculate the unpaid meal period compensation due Plaintiff and Class
9 Members.

10 42. As a result of the unlawful acts of Defendant, Plaintiff and the Class he seeks to
11 represent have been deprived of premium wages in amounts to be determined at trial, and are
12 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

13 43. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
14 described herein and below.

15 **Third Cause of Action**
16 Failure to Provide Rest Periods
17 or to Provide Compensation in Lieu Thereof
(Labor Code §226.7, IWC Wage Orders)
(Against All Defendants)

18 44. Plaintiff repeats and incorporates herein by reference each and every allegation set
19 forth above, as though fully set forth herein.

20 45. By their failure to provide a minimum ten (10) minute rest period for every four hours
21 or major fraction thereof worked per day by Non-Exempt Employees, and failing to provide
22 compensation for such non-provided rest periods, as alleged above, Defendant willfully violated the
23 provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

24 46. As a result of the unlawful acts of Defendant, Plaintiff and the Class he seeks to
25 represent have been deprived of premium wages in amounts to be determined at trial, and are
26 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

27 47. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
28 described herein and below.

Fourth Cause of Action
Failure to Reimburse Employee Expenses
(Labor Code §2802)
(Against All Defendants)

48. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

49. By their policy of unlawfully requiring Non-Exempt Employees to use their personal phones in the performance of their job and requiring them to provide their own equipment without reimbursement, Defendant willfully violated the provisions of Lab. Code § 2802.

50. As a result of the unlawful acts of Defendant, Plaintiff and the Class he seeks to represent are entitled to recovery of the full amount of expenses incurred plus interest, attorneys' fees, and costs, under Labor Code § 2802.

51. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

Fifth Cause of Action
Failure to Timely Pay Wages During Employment
(Labor Code § 204)
(Against All Defendants)

52. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

53. Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§226.7, 510, 1194, 1197 and other sections became due and payable to Plaintiff and Class Members in each month that he or she was not paid all lawful wages owed or provided with lawful meal period or rest period to which he or she was entitled. Defendants violated Lab. Code §204 by failing to pay said wages when they were due and payable.

54. Labor Code section 210(a) provides that "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

a. For any initial violation, one hundred dollars (\$100) for each failure to pay each

1 employee.

2 b. For each subsequent violation, or any willful or intentional violation, two hundred
3 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
4 withheld.

5 55. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
6 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
7 recovery of such amounts, plus interest and penalties.

8 56. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
9 described herein and below.

10 **Sixth Cause of Action**
11 Failure to Timely Pay Wages Due at Termination
(Labor Code §§ 201-203)
(Against All Defendants)

12 57. Plaintiff repeats and incorporates herein by reference each and every allegation set
13 forth above, as though fully set forth herein.

14 58. Sections 201 and 202 of the California Labor Code require Defendant to pay its
15 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
16 Code provides that if an employer willfully fails to timely pay such wages the employer must, as a
17 penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
18 action is commenced. The penalty cannot exceed 30 days of wages.

19 59. Affected class members are entitled to compensation for all forms of wages earned,
20 including overtime compensation and compensation for non-provided rest and meal periods but to
21 date have not received such compensation therefore entitling them Labor Code section 203 penalties.

22 60. More than 30 days have passed since Plaintiff and affected Class Members have left
23 Defendant's employ, and on information and belief, have not received payment pursuant to Labor
24 Code §203. As a consequence of Defendant's willful conduct in not paying all earned wages, certain
25 Class Members are entitled to 30 days wages as a penalty under Labor Code section 203 for failure
26 to pay legal wages.

27 61. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
28 described herein and below.

Seventh Cause of Action
Knowing and Intentional Failure to Comply with
Itemized Employee Wage Statement Provision
(Labor Code § 226(b))
(Against All Defendants)

62. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

63. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendant to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. On information and belief, Defendant has failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

64. Plaintiff and Class Members have been injured by Defendant's actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

65. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

66. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

Eighth Cause of Action
Violation of the Unfair Competition Law
(Business and Professions Code §§ 17200-17208)
(Against All Defendants)

67. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

68. Business & Professions Code Section 17200 provides: As used in this chapter, unfair competition shall mean and include any **unlawful, unfair** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1

1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)
2 (Emphasis added.)

3 69. Defendant's violations of the Labor Code and Wage Order provisions set forth above
4 constitute unlawful and/or unfair business acts or practices.

5 70. The actions of Defendant, as alleged within this Complaint, constitute false,
6 fraudulent, unlawful, unfair, fraudulent, and deceptive business practices, within the meaning of
7 Business and Professions Code section 17200, *et seq.*

8 71. Plaintiff and Class Members have been personally aggrieved by Defendant's unlawful
9 and unfair business acts and practices alleged herein.

10 72. As a direct and proximate result of the unfair business practices of Defendant, and
11 each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to
12 restitution of all wages which have been unlawfully withheld from Plaintiff and members of the
13 Plaintiffs Class as a result of the business acts and practices described herein.

14 73. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
15 described herein and below.

16 **Ninth Cause of Action**
17 Labor Code Private Attorneys General Act
(Cal. Labor Code § 2699 *et seq.*)
18 (Against All Defendants)

19 74. Plaintiff repeats and incorporates herein by reference each and every allegation set
20 forth above, as though fully set forth herein.

21 75. Plaintiff brings these claims for civil penalties as a representative action on behalf of
22 herself and all Non-Exempt Employees employed by, or formerly employed by Defendants in the
23 state of California during the applicable liability period under Lab. Code § 2699.

24 76. Plaintiff gave written timely notice by certified mail to the Labor and Workforce
25 Development Agency (the "Agency") on or about March 30, 2022, and the employer of the specific
26 provisions of the California Labor Code alleged to have been violated as required by Lab. Code §
27 2699.3. Plaintiff did not receive a response from the Agency within the proscribed time period.

28 77. The policies, acts and practices of Defendants, heretofore described give rise to
statutory penalties including but not limited to Labor Code 201, 202, 203, 204, 226, 210, 246, 226.7,

1 510, 512, 1194, 1197, 1197.5, 1199, 2800, and 2802 through Defendants' failure to pay all wages
2 earned, failure to provide proper meal periods, failure to provide proper rest periods, failure to timely
3 pay wages, failure to reimburse employee expenses, and failure to provide accurate wage statements
4 to Plaintiff and other similarly situated aggrieved employees.

5 78. Plaintiff as an aggrieved employee hereby seeks recovery of civil penalties as
6 prescribed by the Labor Code Private Attorney General Act of 2007 on behalf of herself and other
7 current and former employees of Defendants against whom one or more of the violations of the
8 Labor Code was committed during the applicable period.

10 **VII. PRAYER**

- 11 1. That the Court determine that this action may be maintained as a class action;
- 12 2. For compensatory damages in an amount according to proof with interest thereon;
- 13 3. For economic and/or special damages in an amount according to proof with interest
14 thereon;
- 15 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
- 16 5. For premium pay and penalties pursuant to Labor Code §§ 203, 204, 2699;
- 17 6. For attorneys' fees, interests and costs of suit under Labor Code §§ 225, 1194, 2699,
18 2802;
- 19 7. For such other and further relief as the Court deems just and proper.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

23 Dated: June 21, 2022

JAMES HAWKINS, APLC

24 
25 James R. Hawkins, Esq.
26 Isandra Y. Fernandez, Esq.
27 Lance Dacre, Esq.
28 Attorneys for Plaintiff
Julian Mendoza Padilla

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On June 21, 2022, I served on the interested parties in this action the following document(s) entitled:

[XX] BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List below and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

Via LWDA Website: Labor and Workforce Development Agency Attn: PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 http://www.dir.ca.gov/Private-Attorneys-General-Act	Nissho of California, Inc. Agent for Service of Process: Nobu Jimmy Kato 1902 S. Santa Fe Avenue Vista, CA 92083
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Executed on June 21, 2022, at Irvine, California

PROOF OF SERVICE