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16 ALSTON A. BOBB, and all others similarly situated

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18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF ALAMEDA**
21 **(UNLIMITED JURISDICTION)**

22 ALSTON A. BOBB, on behalf of himself and all
23 others similarly situated, and the general public,

Case No. 22CV012379

FIRST AMENDED COMPLAINT FOR:

24 *Plaintiff,*

25 vs.

26 R&L BROOKS ASSOCIATES, INC., a
27 California corporation; and DOES 1–50,
28 inclusive,

Defendants.

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202 and 203); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.

JURY TRIAL DEMANDED



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1 Plaintiff, Alston A. Bobb (hereafter “Plaintiff” or “Bobb”), on behalf of himself,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action for alleged violations of the California Labor Code,
5 Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendant R&L Brooks Associates, Inc., a
7 California corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him for unpaid wages, statutory penalties, interest, and related relief. These claims are based on
10 Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular, overtime and doubletime
12 wages, earned for all hours worked at the correct rates of pay;

13 (B) Separately compensate for rest and recovery periods;

14 (C) Provide all meal periods;

15 (D) Authorize and permit all rest breaks;

16 (E) Pay premium wages for unprovided meal periods;

17 (F) Pay premium wages for unprovided rest breaks;

18 (G) Indemnify for necessary work-related expenditures;

19 (H) Issue only accurate and complete itemized wage statements;

20 (I) Issue statements of the total hours of rest and recovery periods; and

21 (J) Timely pay wages upon termination of employment;

22 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
23 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this action.

24 **II. THE PARTIES**

25 3. Plaintiff Alston A. Bobb is a resident of California.

26 4. Defendant R&L Brooks Associates, Inc. is a corporation organized and existing
27 under the laws of California and also a citizen of California based on Plaintiff’s information and
28 belief.



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1 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which
14 resulted in Defendants not compensating Plaintiff or otherwise complying with his rights in
15 accordance with applicable California labor laws as alleged herein.

16 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
17 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
18 lack thereof, which resulted in Defendants not paying Plaintiff accordance with applicable laws
19 as alleged herein.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
22 **CORRECT RATES**

23 **Lab. Code §§ 221, 510, 1194, 1197, and 1198**

24 **(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)**

25 9. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 10. At all relevant times, Plaintiff has been entitled to the protections of both the Labor
27 Code and the Wage Order.

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S P I V A K LAW

1 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
2 **THE CORRECT RATES OF PAY**

3 11. Section 2 of the Wage Order defines “hours worked” as “the time during which an
4 employee is subject to the control of an employer, and includes all the time the employee is
5 suffered or permitted to work, whether or not required to do so.”

6 12. Section 3 of the Wage Order states:

7
8 (c) Daily Overtime – General Provisions

9
10 (d) The following overtime provisions are applicable to
11 employees 18 years of age or over and to
12 employees 16 or 17 years of age who are not
13 required by law to attend school and are not
14 otherwise prohibited by law from engaging in the
15 subject work. Such employees shall not be
16 employed more than eight (8) hours in any workday
17 or more than 40 hours in any workweek unless the
18 employee receives one and one-half (1 ½) times
19 such employee’s regular rate of pay for all hours
20 worked over 40 hours in the workweek. Eight (8)
21 hours of labor constitutes a day’s work.
22 Employment beyond eight (8) hours in any
23 workday or more than six (6) days in any workweek
24 is permissible provided the employee is
25 compensated for such overtime at not less than:

26
27 (e) One and one-half (1 ½) times the employee’s
28 regular rate of pay for all hours worked in excess of



1 eight (8) hours up to and including 12 hours in any
2 workday, and for the first eight (8) hours worked on
3 the seventh (7th) consecutive day of work in a
4 workweek.

5
6 (f) Double the employee's regular rate of pay for all
7 hours worked in excess of 12 hours in any workday
8 and for all hours worked in excess of eight (8) hours
9 on the seventh (7th) consecutive day of work in a
10 workweek.

11
12 (g) The overtime rate of compensation required to be
13 paid to a nonexempt full-time salaried employee
14 shall be computed by using the employee's regular
15 hourly salary as one-fortieth (1/40) of the
16 employee's weekly salary.

17
18 13. Section 4 of the Wage Order requires an employer to pay non-exempt employees
19 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
20 an employer has actual or constructive knowledge that employees are working.

21 14. Labor Code section 510 states:

22
23 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
24 in one workday and any work in excess of 40 hours in any one workweek and the
25 first eight hours worked on the seventh day of work in any one workweek shall be
26 compensated at the rate of no less than one and one-half times the regular rate of
27 pay for an employee. Any work in excess of 12 hours in one day shall be
28 compensated at the rate of no less than twice the regular rate of pay for an



1 employee. In addition, any work in excess of eight hours on any seventh day of a
2 workweek shall be compensated at the rate of no less than twice the regular rate of
3 pay of an employee. Nothing in this section requires an employer to combine more
4 than one rate of overtime compensation in order to calculate the amount to be paid
5 to an employee for any hour of overtime work.

6
7 15. Labor Code section 1194 invalidates any agreement between an employer and an
8 employee to work for less than the minimum wage required under the applicable Wage Order.

9 16. Labor Code section 1197 makes it unlawful for an employer to pay an employee
10 less than the minimum wage required under the applicable Wage Order for all hours worked
11 during a payroll period.

12 17. Labor Code section 1198 makes it unlawful for an employer to employ an
13 employee under conditions that violate the Wage Order.

14 18. In conjunction, these provisions of the Labor Code require employers to pay non-
15 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
16 worked, including unrecorded hours when the employer knew or reasonably should have known
17 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
18 Cal. 4th 575, 585.)

19 19. At all relevant times during the applicable limitations period, Defendants failed to
20 compensate Plaintiff for all hours worked, including, but not limited to minimum, regular, and
21 overtime wages for all minimum, regular, overtime hours, respectively, that he worked at the
22 correct rates of pay.

23 20. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
24 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
25 failure to compensate Plaintiff for all hours worked at the correct rates of pay as required by
26 California law.

27 21. As a result of Defendant's unlawful conduct, Plaintiff has suffered damages in
28 amounts subject to proof to the extent he was not paid for all hours worked, including, but not



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1 limited to minimum, regular, and overtime wages for all minimum, regular, overtime hours,
2 respectively, that he worked at the correct rates of pay.

3 22. By reason of the above, Plaintiff is entitled to all wages he was not compensated
4 for, including, but not limited to minimum, regular, and overtime wages for all minimum, regular,
5 overtime hours, respectively, that he worked at the correct rates of pay.

6 23. Accordingly, Defendant owes Plaintiff \$1,606.00 in unpaid regular minimum
7 wages, \$239.00 unpaid overtime hours.

8 **B. UNLAWFUL WAGE DEDUCTIONS**

9 24. Under Labor Code § 221, “It shall be unlawful for any employer to collect or
10 receive from an employee any part of wages theretofore paid by said employer to said employee.”
11 The Defendants deducted wages from the wages earned by Plaintiff for the purchase and
12 maintenance of their uniforms in violation of Labor Code § 221.

13 25. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
15 deduction of wages belonging to Plaintiff in violation of California law.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 **Lab. Code §§ 226.7 and 512**

19 **(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)**

20 26. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

21 27. At all relevant times during the applicable limitations period, Plaintiff has been an
22 employee of Defendants and entitled to the benefits and protections of California Labor Code §§
23 226.7, 512 and 1198, and the Wage Order.

24 28. In relevant part, California Labor Code § 1198 states:

25
26 The maximum hours of work and the standard conditions of labor fixed by the
27 commission shall be the maximum hours of work and the standard conditions of
28 labor for employees. The employment of any employee for longer hours than those





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fixed by the order or under conditions of labor prohibited by the order is unlawful.

29. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

30. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period,

1 the meal period shall be considered an “on duty” meal period and
2 counted as time worked. . . .

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

9
10 31. In relevant part, California Labor Code § 226.7 states:

11
12 (a) An employer shall not require an employee to work during a meal or rest
13 period mandated pursuant to an applicable statute, or applicable
14 regulation, standard, or order of the Industrial Welfare Commission, the
15 Occupational Safety and Health Standards Board, or the Division of
16 Occupational Safety and Health.

17
18 (b) If an employer fails to provide an employee a meal period or rest
19 period in accordance with a state law, including, but not limited to, an
20 applicable statute or applicable regulation, standard, or order of the
21 Industrial Welfare Commission, the Occupational Safety and Health
22 Standards Board, or the Division of Occupational Safety and Health, the
23 employer shall pay the employee one additional hour of pay at the
24 employee’s regular rate of compensation for each work day that the meal
25 or rest period is not provided.

26
27 32. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was
28 entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or



1 more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-
2 minute meal period when they worked more than 10 hours in a workday.

3 33. Defendants intentionally failed to provide Plaintiff with all required 30-minute
4 duty free meal periods in accordance with the Wage Order. Plaintiff was not provided with all 30-
5 minute, uninterrupted meal periods even though he worked more than five hours a day.
6 Additionally, Plaintiff was not compensated for these unprovided meal periods.

7 34. At all relevant times, Defendants failed to provide Plaintiff with all timely rest
8 and meal periods. Defendants denied Plaintiff his 30-minute off-duty meal period within the first
9 five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they
10 failed to provide Plaintiff with timely meal periods.

11 35. Plaintiff is informed and believes and thereon alleges that, at all relevant times
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
13 which resulted in Defendants not providing Plaintiff with all off-duty meal periods required by
14 California law.

15 36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
16 amounts subject to proof to the extent he was not paid additional wages owed for all meal periods
17 not provided to them.

18 37. By reason of the above, Plaintiff is entitled to premium wages for workdays in
19 which one or more meal periods was not provided to him pursuant to California Labor Code §
20 226.7. Defendant employed Plaintiff over the relevant time period for approximately 754
21 workdays exceeding five hours in which Defendant failed to provide him with one or more meal
22 breaks as required by law. Defendant did not pay Plaintiff premium wages for missed meal breaks
23 for any of these workdays.

24 38. Accordingly, Defendant owes Plaintiff approximately \$5,618.00 for missed meal
25 break premium wages.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

3 **Lab. Code §§ 226.7 and 1198**

4 **(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)**

5 39. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

6 40. At all relevant times during the applicable limitations period, Plaintiff has been an
7 employee of Defendants and entitled to the benefits and protections of California Labor Code §§
8 226.7 and 1198, and the Wage Order.

9 41. In relevant part, California Labor Code § 1198 states:

10
11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and
13 the standard conditions of labor for employees. The employment
14 of any employee for longer hours than those fixed by the order or
15 under conditions of labor prohibited by the order is unlawful.

16
17 42. In relevant part, Section 12 of the Wage Order states:

18 Rest Periods:

19
20 (c) Every employer shall authorize and permit all employees to take
21 rest periods, which insofar as practicable shall be in the middle of
22 each work period. The authorized rest period time shall be based
23 on the total hours worked daily at the rate of ten (10) minutes net
24 rest time per four (4) hours or major fraction thereof. However, a
25 rest period need not be authorized for employees whose total daily
26 work time is less than three and one-half (3 ½) hours. Authorized
27 rest period time shall be counted as hours worked for which there
28 shall be no deduction from wages.



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(d) If an employer fails to provide an employee 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.

43. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

44. Pursuant to the Wage Order, Plaintiff was entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.



1 45. Defendants intentionally failed to authorize and permit Plaintiff to take all 10-
2 minute rest periods free from any work duties in accordance with the Wage Order.

3 46. At all relevant times, Defendants failed to authorize and permit Plaintiff to take all
4 timely rest periods. Furthermore, Defendants failed to pay premium wages to for days on which
5 they failed to authorize and permit Plaintiff to take timely rest periods.

6 47. At all relevant times, Defendants failed to authorize and permit Plaintiff to take a
7 ten-minute, paid, duty-free rest break every four hours worked or major fraction thereof.
8 Defendants did not seek an exemption from the rest period protections of the Wage Order from
9 the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay
10 Plaintiff premium wages on workdays they failed to authorize and permit him to take 10-minute
11 rest periods every four hours worked or major fraction thereof.

12 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times
13 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
14 which resulted in Defendants not authorizing and permitting Plaintiff to take all rest breaks
15 required by California law.

16 49. Defendants failed to provide Plaintiff with all required rest breaks in accordance
17 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not providing Plaintiff with all rest breaks required by California
20 law.

21 50. Defendants failed to pay Plaintiff the additional wages required by California
22 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
23 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
24 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
25 Plaintiff with additional wages for all rest breaks not provided to them as required by California
26 Labor Code § 226.7.

27 51. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
28 amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks



1 not provided to him.

2 52. By reason of the above, Plaintiff is entitled to premium wages for workdays in
3 which one or more rest breaks were not provided to him pursuant to California Labor Code §
4 226.7. Defendant employed Plaintiff over the relevant time period for 754 work days exceeding
5 three hours in which Defendant failed to authorize or permit her to take one or more rest breaks
6 as required by law. Defendant did not pay her premium wages for missed rest breaks for any of
7 these workdays. Accordingly, Defendant owe Plaintiff \$5,618.00 in missed rest break premium
8 wages.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **Lab. Code §§ 1198 and 2802**

12 **(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)**

13 53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

14 54. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
15 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
16 consequence of the discharge of his or her duties.”

17 55. California Labor Code § 1198 prohibits employers from employing their
18 employees under conditions prohibited by the Wage Order.

19 56. At all relevant times, Defendants required Plaintiff to incur certain business
20 expenses in the course of performing their duties.

21 57. As described above, the Defendants required Plaintiff to incur certain business
22 expenses in the course of performing their duties. The Defendants required Plaintiff to supply a
23 mobile phone and uniforms to perform his job duties. However, the Defendants did not provide
24 these items and did not reimburse Plaintiff for these items. Plaintiff incurred business expenses
25 on behalf of Employer because Employer required Plaintiff to wear a uniform, but failed to
26 provide a uniform. Plaintiff had to purchase his own uniform. Moreover, Plaintiff was required
27 to use his personal mobile phone, but Employer failed to reimburse Plaintiff for the use of
28 Plaintiff's personal cell phone.



58. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff for the reasonable expenses they incurred during the course of performing his duties.

59. By reason of the above, Plaintiff is entitled to reimbursement for all necessary expenditures and losses and interest due and owing pursuant to California Labor Code section 2802(b) in the amount of \$899.28. (18 months of unreimbursed cell phone expenses x \$30=\$540.00 + \$359.28 in unreimbursed uniform expenses = \$899.28.) Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code section 2802(c).

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code §§ 226

(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

60. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

61. Pursuant to California Labor Code § 226(a), Plaintiff was entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing:

A. Gross wages earned;

B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;

E. Net wages earned;

F. The inclusive dates of the period for which the employee is paid;



1 G. The name of the employee and his or her social security number, except
2 that by January 1, 2008, only the last four digits of his or her social security number or an
3 employee identification number other than a social security number may be shown on the itemized
4 statement;

5 H. The name and address of the legal entity that is the employer; and

6 I. All applicable hourly rates in effect during the pay period and the
7 corresponding number of hours worked at each hourly rate by the employee.

8 62. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
9 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
10 the employer fails to provide accurate and complete information as required by California Labor
11 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
12 alone one or more of the following:

13 A. The amount of the gross wages or net wages paid to the employee during
14 the pay period or any of the other information required to be provided on the itemized wage
15 statement pursuant to California Labor Code § 226(a);

16 B. Which deductions the employer made from gross wages to determine the
17 net wages paid to the employee during the pay period;

18 C. The name and address of the employer and, if the employer is a farm labor
19 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
20 and address of the legal entity that secured the services of the employer during the pay period;

21 D. The name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social security number; and

23 E. The number of piece-rate units earned and the piece rate.

24 63. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
25 means a reasonable person would be able to readily ascertain the information without reference
26 to other documents or information.

27 64. As alleged herein, at all relevant times during the applicable limitations period,
28 Defendants violated California Labor Code section 226 because they did not properly and



1 accurately itemize Plaintiff's gross wages earned, net wages earned, the total hours worked, the
2 corresponding number of hours worked at each rate by the employee and other requirements of
3 California Labor Code section 226. Defendants failed to state in the wage statements they issued
4 to Plaintiff all his hours worked and wages earned, including, but not limited to, regular and
5 overtime wages for work they performed off-the-clock after clocking-out (as described above).
6 Defendants knowingly and intentionally did not issue either as a detachable part of the check,
7 draft, or voucher paying the employee's wages, or separately if wages are paid by personal check
8 or cash, statements to Plaintiff that states all minimum wages earned, all regular wages earned,
9 all overtime wages earned, all rest break premium wages earned, all meal period premium wages
10 earned, and all hours worked at each rate of pay. Plaintiff worked overtime that was not reflected
11 on his paystubs. Moreover, Plaintiff's unpaid hours were not compensated.

12 65. By Defendants failing to pay premiums for all rest break premium wages earned
13 and all meal period wages earned and state them on the wage statements of Plaintiff, Defendants
14 failed to timely pay such earned wages in violation of Labor Code § 226.

15 66. Defendants' failure to provide Plaintiff with accurate wage statements was
16 knowing and intentional. Defendants had the ability to provide Plaintiff with accurate wage
17 statements but intentionally provided wage statements that Defendants knew were not accurate.

18 67. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff has suffered injury. Their legal rights to receive accurate wage statements were violated
20 and he was misled about the amount of wages he had actually earned and was owed. In addition,
21 the absence of accurate information on his wage statements prevented immediate challenges to
22 Defendants' unlawful pay practices, has required discovery and mathematical computations to
23 determine the amounts of wages owed, has caused difficulty and expense in attempting to
24 reconstruct time and pay records and/or has led to the submission of inaccurate information about
25 wages to state and federal government agencies. Further, Plaintiff was not able to ascertain from
26 the wage statements whether Defendants complied with their obligations under California Labor
27 Code section 226(a).

28 68. Pursuant to California Labor Code section 226(e), Plaintiff is entitled to recover



1 the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which
2 a violation of California Labor Code section 226(a) occurred and one hundred dollars (\$100.00)
3 for each violation of California Labor Code section 226(a) in a subsequent pay period, not to
4 exceed an aggregate penalty of four thousand dollars (\$4,000) and is also entitled to an award of
5 costs and reasonable attorneys' fees. As such, Defendant are liable to him in the amount of
6 \$3,350.00 in statutory penalties.

7 **SIXTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(Lab. Code §§ 201, 202, and 203)**

10 **(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)**

11 69. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

12 70. At all relevant times during the applicable limitations period, Plaintiff has been
13 non-exempt employee of Defendants and entitled to the benefits and protections of California
14 Labor Code §§ 201–203, and the Wage Order.

15 71. Labor Code § 201 provides that all earned and unpaid wages of an employee who
16 is discharged are due and payable immediately at the time of discharge.

17 72. Labor Code § 202 provides that all earned and unpaid wages of an employee who
18 quits after providing at least 72-hours notice before quitting are due and payable at the time of
19 quitting and that all earned and unpaid wages of an employee who quits without providing at least
20 72-hours notice before quitting are due and payable within 72 hours.

21 73. The Defendants failed to pay Plaintiff , whose employment ended, all of the earned
22 but unpaid wages described above by the conclusion of their employment with Plaintiff, including
23 minimum wages, regular wages, overtime wages, unprovided meal period premium wages,
24 unprovided rest break premium wages, and deducted wages. Additionally, the Defendants failed
25 to issue to Plaintiff, whose employment ended his final paycheck, until the next regular pay day
26 following the termination. Thus, Defendants paid Plaintiff on the 5th and 20th of the month and
27 because Plaintiff was terminated on August 16, 2021, he had to wait four (4) days after being
28 terminated, until August 20, 2021, to receive his final paycheck.



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74. By failing to pay such earned wages to Plaintiff, Defendants failed to timely pay him all earned and unpaid wages in violation of Labor Code § 201 or § 202.

75. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff all of his earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

76. By Defendants failing to pay premiums and state them on the wage statements of Plaintiff, Defendants failed to timely pay such earned wages in violation of Labor Code § 203.

77. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties in amounts subject to proof not to exceed 30 days of waiting time penalties for each himself.

78. By reason of the above, Plaintiff is entitled to waiting time penalties in the amount of \$4,185.00.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff against all Defendants except Defendant Randolph Roland Brooks)

79. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

80. At all relevant times during the applicable limitations period, Plaintiff has been an employee of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

81. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

82. As a result of Defendants' unfair competition as alleged herein, has suffered injuries in fact and lost money or property. Plaintiff was deprived of regular wages, minimum



1 wages, overtime wages, missed meal period premium wages, missed rest period premium wages,
2 uniform expenses, telecom expenses, and comparable money and property.

3 83. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled
4 to restitution of all monies rightfully belonging to him that Defendants did not pay him or
5 otherwise retained by means of their unlawful and unfair business practices.

6 84. Plaintiff is entitled to reasonable attorneys' fees in connection with their unfair
7 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
8 benefit doctrine and/or the common fund doctrine.

9 **III. PRAYER FOR RELIEF**

10 85. WHEREFORE, Plaintiff, prays for relief and judgment against Defendants as
11 follows:

12 A. Unpaid wages, in the amount of \$5,618.00 for missed rest break premiums
13 wages, \$5,618.00 for missed meal break premium wages, and \$1,840.00 in unpaid minimum,
14 regular, overtime, and double time wages;

15 A. Statutory penalties, for incomplete and improper wage statements in the
16 amount of \$3,350.00;

17 B. Waiting time penalties in the amount of \$4,185.00;

18 C. Restitution in the amount of \$899.28 for unreimbursed expenses and the
19 amounts stated in paragraph 68 if not already awarded;

20 D. Pre-Judgment interest in the amount of \$1,397.53 for interest on missed
21 rest break premium wages, missed meal break premium wages, unpaid minimum, regular,
22 overtime, and double time wages, and unreimbursed expenses;

23 E. Costs of the suit in the amount of \$3,264.36; and

24 F. Reasonable attorneys' fees in the amount of \$36,414.20; and

25 G. Such other relief as the Court deems just and proper.

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IV. DEMAND FOR JURY TRIAL

Plaintiff, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 04 / 01 / 2024

By: 

DAVID G. SPIVAK,
Attorneys for Plaintiff, ALSTON A.
BOBB, and all others similarly situated



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