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County of Fresno
By: P. Shaeffer, Deputy

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

EVERARDO VELAZQUEZ,

Plaintiff,

vs.

FRESNO OXYGEN AND WELDING
SUPPLIERS, INC, a corporation, and DOES
1-100, inclusive,

Defendants.

Case No.: 25CECG01025

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PROVIDE MEAL BREAKS
4. FAILURE TO PROVIDE REST BREAKS
5. FAILURE TO PAY SICK PAY
6. FAILURE TO PAY ALL WAGES DUE
AND OWING AT END OF
EMPLOYMENT
7. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
8. FAILURE TO REIMBURSE BUSINESS
EXPENSES
9. UNLAWFUL BUSINESS PRACTICES
10. AGE DISCRIMINATION
11. DISABILITY DISCRIMINATION
12. FEHA RETALIATION
13. LABOR CODE RETALIATION
14. LABOR CODE PRIVATE ATTORNEY
GENERAL ACT OF 2004 ("PAGA")

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1 Plaintiff Everardo Velazquez brings this class and representative action against Fresno Oxygen
2 and Welding Suppliers, Inc. and Does 1-100 for violations of the California Labor Code and the
3 Business and Professions Code.

4 **PARTIES**

5 1. Everardo Velazquez ("Plaintiff") is and at all times relevant herein was employed in
6 Fresno County, California, and was an "employee" as defined by the California Labor Code ("Labor
7 Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

8 2. Fresno Oxygen and Welding Suppliers, Inc. ("FOWS" or "Defendant") is a corporation
9 organized and existing under the laws of the state of California which does business in California and
10 throughout the United States. At all times relevant herein, FOWS has been an "employer" as defined
11 by the Labor Code and the applicable IWC Order(s).

12 3. FOWS and Does 1-100 are collectively referred to as Defendants.

13 4. Plaintiff is informed and believes, and on that basis alleges, that each of the Defendants
14 is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and
15 damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each
16 Defendant was acting within the course and scope of said agency and/or employment, with the
17 knowledge and/or consent of said co-Defendant.

18 5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
19 herein, each of the Defendants was acting as the agent, servant, employee, partner and/or joint venturer
20 of and was acting in concert with each of the remaining Defendants in doing the things herein alleged,
21 while at all times acting within the course and scope of such agency, service, employment partnership,
22 joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting
23 both individually and within the course and scope of such agency and/or employment, with the
24 knowledge and/or consent of the remaining Defendants.

25 **JURISDICTION AND VENUE**

26 6. This Court is the proper Court, and this action is properly filed in the Superior Court of
27 California for the County of Fresno because Plaintiff conducts business in this County and Plaintiff
28 has performed work for FOWS in this County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

7. FOWS provides welding services and supplies throughout California.

8. Plaintiff was employed with FOWS as an hourly, nonexempt employee from February 2023 until September 2024. Plaintiff worked for FOWS in California, specifically out of its Fresno, CA location.

9. As an hourly, non-exempt employee, Plaintiff was entitled to receive overtime under California law, as well as meal and rest breaks pursuant to California law.

10. During the relevant time period, Plaintiff and FOWS's other non-exempt employees were often required to work off-the-clock. This resulted in them being denied minimum wage and overtime.

11. Additionally, Plaintiff and FOWS's other non-exempt employees' time was often modified to FOWS's benefit. Accordingly, Plaintiff and FOWS's other non-exempt California employees were often shorted minimum wage and overtime.

12. Plaintiff and FOWS's other non-exempt, hourly employees are eligible for and at times receive non-discretionary bonuses, commissions, and other items of compensation. Notwithstanding the foregoing, FOWS failed to properly calculate and pay the overtime wages owed to Plaintiff and its other non-exempt employees. Specifically, pursuant to its uniform policy, practice and procedure, FOWS a) failed to include commissions, non-discretionary bonuses and other items of compensation when determining Plaintiff and its other non-exempt employees' "regular rate of pay" for purposes of overtime or b) miscalculated Plaintiff and its other non-exempt employees' "regular rate of pay" for purposes of overtime.

13. Plaintiff and FOWS's other non-exempt employees were also not consistently authorized or permitted to take meal and rest breaks as required by California law. FOWS regularly required Plaintiff and its other non-exempt employees to work through meal and rest breaks due to understaffing and work demands.

14. On the occasions that Plaintiff and FOWS's other non-exempt employees were able to take their meal breaks, they routinely occurred after 5 hours of work. Further, FOWS frequently failed

1 to relieve Plaintiff and its other non-exempt employees of employer control during their meal and rest
2 breaks.

3 15. When Plaintiff and FOWS's other non-exempt employees were not provided compliant
4 meal and rest breaks, FOWS routinely did not pay premiums as required by California law. If FOWS
5 did pay meal and rest period premiums, to Plaintiff and its other non-exempt employees, it thereby
6 acknowledged it had deprived them of the required meal and rest periods.

7 16. When premiums were paid, they were paid at the employee's base rate of pay rather
8 than his or her regular rate of pay.

9 17. Finally, Plaintiff and FOWS's other non-exempt California employees' time was often
10 modified to Employer's benefit.

11 18. Plaintiff and FOWS's other non-exempt employees were also entitled to sick pay
12 pursuant to California Labor Code section 245, et seq. Although Labor Code section 248.5,
13 subdivision (l)(1) mandates that paid sick leave for non-exempt employees be "calculated in the same
14 manner as the regular rate of pay for the workweek in which the employee uses paid sick time",
15 pursuant to its uniform policy, practice and procedure, FOWS failed to include commissions, non-
16 discretionary bonuses and other items of compensation when determining Plaintiff and its other non-
17 exempt employees' regular rate of pay for purposes of sick pay. As such, FOWS did not properly
18 "provide" its non-exempt employees with sick pay in violation of Labor Code section 233.

19 19. Because of the violations set forth above, the wage statements furnished by FOWS to
20 Plaintiffs and its other non-exempt employees violate California Labor Code section 226(a) insofar as
21 they fail to accurately show:

- 22 a. The gross wages earned, in violation of section 226(a)(1);
- 23 b. The total hours worked, in violation of section 226(a)(2);
- 24 c. The net wages earned, in violation of section 226(a)(5); and
- 25 d. All applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate in violation of section 226(a)(9).

27 20. Because FOWS has failed to pay its Plaintiff and its other non-exempt, California
28 employees for all the hours they worked, overtime and sick pay at the correct rate of pay, and because
they have not been provided compliant meal and rest breaks, or the premiums associated with missing

1 the same, they have not been timely paid all wages due and owing to them during each pay period nor
2 at the end of their employment.

3 21. When Plaintiff's employment ended in September 2024, he was not paid the
4 outstanding wages owed him as set forth above and has not been paid those wages to date. Similarly,
5 FOWS's other non-exempt employees whose employment has ended within the relevant time period
6 still have unpaid wages outstanding.

7 22. Plaintiff and FOWS's other non-exempt employees were required to incur expenses in
8 the performance of their jobs for which they were not reimbursed in violation of Labor Code section
9 2802. This included, but was not limited to, use of their personal cell phones on and off the job to
10 communicate with FOWS. However, FOWS has not reimbursed Plaintiff or the other non-exempt
11 employees for these expenditures, including for use of their personal cellular phones.

12 23. From at least four years prior to the filing of this action, FOWS has adopted and
13 employed unfair business practices. These unfair business practices include, but are not limited to,
14 failing to properly pay all minimum and overtime wages due, failing to provide compliant meal and
15 rest breaks and the premiums associated with same, failing to pay sick time at the legally-required rate
16 of pay, and failing to reimburse employees for all business expresses.

17 **INDIVIDUAL ALLEGATIONS**

18 24. During his employment with FOWS, Plaintiff was approximately sixty years old.

19 25. Though hired as a delivery driver, Plaintiff sought training to take a position with
20 FOWS as a "Bulk Driver." Despite repeatedly requesting this training, Plaintiff's supervisor,
21 "Gilbert," frequently held back and postponed training Plaintiff, instead providing training for the
22 position to substantially younger drivers.

23 26. Plaintiff complained to FOWS' human resources department that he was unfairly being
24 denied training for the Bulk Driver position, but his complaints went unaddressed.

25 27. Shortly before his termination, Plaintiff suffered a physical injury at work that rendered
26 him disabled and required him to remain off work for approximately two weeks on the advice of his
27 medical providers as a reasonable accommodation for his disabling injury.

1 28. When Plaintiff returned to work, he learned that FOWS had started training a less
2 experienced driver in his mid-thirties for the bulk driver position while Plaintiff was recovering from
3 his disabling injury.

4 29. Though Plaintiff was now back at work and ready to resume his Bulk Driver training,
5 he was told instead to cover the younger driver's regular work duties while that driver received daily
6 training for the Bulk Driver position.

7 30. Approximately two days before his termination, Plaintiff complained to Gilbert about
8 again being denied Bulk Driver training and being required to cover his younger counterpart's regular
9 duties while that employee was being afforded said training instead of Plaintiff.

10 31. When Gilbert demurred and attempted to avoid the issue, Plaintiff told Gilbert that he
11 intended to complaint to human resources about this discriminatory conduct toward him.

12 32. The next day, which was the day before he was terminated, Plaintiff was tasked with
13 making a delivery to Sacramento. Prior to leaving for this delivery, Plaintiff informed Gilbert that he
14 would need to briefly stop by his home to take medication to treat a medical condition. Plaintiff also
15 told Gilbert that the medication had to be taken with food, so he needed to eat briefly as well. Gilbert
16 did not take any issue with Plaintiff's request.

17 33. Plaintiff left to make his delivery, and as he had informed Gilbert, stopped at his home
18 on the way for approximately 10-15 minutes to eat and take his medication. Plaintiff then continued
19 on with his delivery, which was completed without issue.

20 34. The following day, Plaintiff was called into a meeting with Gilbert, who informed
21 Plaintiff that his employment with FOWS was being terminated for the stated and pretextual reason
22 that Plaintiff had deviated from his route when he had stopped by his home to eat and take medication.

23 35. In reality, Plaintiff's employment with FOWS was terminated because of his age, his
24 disability, his request for and taking of two weeks off work as a reasonable accommodation for his
25 disability, and his complaints of discriminatory conduct, all in violation of the Fair Employment and
26 Housing Act ("FEHA").

27 36. On February 19, 2025, Plaintiff filed a complaint with the California Civil Rights
28 Department ("CRD") against FOWS, alleging disability discrimination, age discrimination, and

1 retaliation, and received a Right to Sue letter the same day. A copy of the Right to Sue letter and CRD
2 complaint was served on FOWS by certified mail on February 19, 2025.

3 **CLASS ACTION ALLEGATIONS**

4 37. Plaintiff seeks to maintain this action as a class action as to the First through Ninth
5 Causes of Action. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
6 a class action pursuant to Code of Civil Procedure 382. The putative classes which Plaintiff seeks to
7 represent consist of the following:

- 8 a. All current and former non-exempt employees of FOWS who worked for FOWS at
9 any time from four years prior to the filing of this Complaint through the date of
10 trial (the “Non-Exempt Employee Class”);
- 11 b. All current and former non-exempt employees of FOWS who worked overtime for
12 FOWS at any time from four years prior to the filing of this Complaint, through the
13 date of trial (the “Overtime Class”);
- 14 c. All current and former non-exempt employees of FOWS who used paid sick leave
15 while employed by FOWS at any time from four years prior to the filing of this
16 Complaint, through the date of trial (the “Sick Pay Class”);
- 17 d. All current and former non-exempt employees of FOWS who one or more shifts of
18 longer than five hours for FOWS from four years prior to the filing of this
19 Complaint through the date of trial (the “Meal Break Class”);
- 20 e. All current and former non-exempt employees of FOWS who worked one or more
21 shift of longer than three and one-half hours for FOWS from four years prior to the
22 filing of this Complaint through the date of trial (the “Rest Break Class”);
- 23 f. All current and former non-exempt employees of FOWS who worked for FOWS at
24 any time during from one year prior to the filing of this Complaint through the date
25 of trial (the “Wage Statement Class”); and
- 26 g. All members of the Non-Exempt Employee Class, Overtime Class, Sick Pay Class,
27 Meal Break Class, and the Rest Break Class, whose employment ended at any time
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1 from three years prior to the filing of this Complaint through the date of trial (the
2 “Waiting Time Penalty Class”).

3 The Non-Exempt Employee Class, Overtime Class, Sick Pay Class, Meal Break Class, Rest Break
4 Class, Wage Statement Class, and Waiting Time Penalty Class are collectively referred to as the
5 “Class”.

6 38. The class of persons is so numerous that joinder of all members is impracticable, and
7 the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
8 informed and believes, and based thereon alleges, that Defendants employ more than 100 employees
9 who satisfy the class definition. Although the exact number and identity of class members is not
10 presently known, they can be identified in Defendants’ records through coordinated discovery
11 pursuant to this class action.

12 39. This action may be maintained as a class because the questions of law and fact which
13 are common to class members clearly predominate over any questions affecting only individual
14 members and because a class action is superior to other available methods for adjudicating the
15 controversy.

16 40. There are numerous common questions of law and fact arising out of Defendants’
17 conduct. This class action focuses on Defendants’: (a) systematic failure to properly pay employees
18 for all hours worked, including overtime, at the legally-required rate; (b) systemic failure to pay sick
19 pay at the legally required rate; (c) systemic failure to authorize and permit meal and rest breaks or to
20 pay the requisite premiums in lieu of providing said breaks; (d) systematic failure to provide accurate
21 itemized wage statements; (e) systematic failure to pay all wages due and owing at the end of
22 employment; and (f) systemic failure to reimburse employees for all reasonably required business
23 expenses.

24 41. Furthermore, common questions of fact and law predominate over any questions
25 affecting only individual members of the class. The predominating common or class-wide questions
26 of law and fact include the following:

- 27 a. Whether Defendants failed to pay all their non-exempt California employees for
28 all hours worked;

- b. Whether Defendants failed to pay their non-exempt California employees for all overtime worked or at the required regular rate of pay;
- c. Whether Defendants failed to pay sick pay to their non-exempt California employees at the regular rate of pay;
- d. Whether Defendants miscalculated their employees' regular rate of pay and thereby underpaid them;
- e. Whether Defendants failed to provide compliant meal and breaks to their non-exempt California employees;
- f. Whether Defendants failed to pay all earned wages to their non-exempt California employees;
- g. Whether Defendants failed to pay premiums to their non-exempt California employees as a result of non-compliant meal and rest breaks;
- h. Whether the Defendants failed to furnish accurate itemized wage statements;
- i. Whether Defendants failed to pay all wages due and owing at end of their non-exempt California employees' employment;
- j. Whether Defendants failed to reimburse their non-exempt California employees reasonably necessary business expenses, including personal cellular phone use;
- k. Whether the alleged violations constitute unfair business practices;
- l. Whether the Class is entitled to injunctive relief; and
- m. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

42. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendants. Plaintiff's claims are typical of those of the Class because Defendants subjected Plaintiff and each member of the Class to the same violations alleged herein.

43. The defenses of Defendants, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

1 44. Plaintiff will fairly and adequately protect the interests of all members of the Class, and
2 has retained attorneys with extensive experience in litigation, including class and representative
3 actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and
4 adequately protect the interests of all members of the class because it is in his best interest to prosecute
5 the claims alleged herein in order to obtain the full compensation due him and the other class
6 members.

7 45. A class action is superior to any other method available for fairly and efficiently
8 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
9 litigating the claims of individual class members would be unnecessarily costly and burdensome and
10 would deter individual claims, 3) litigating the claims of individual class members would create a risk
11 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
12 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
13 bring individual claims, 5) class members would be discouraged from pursuing individual claims
14 because the damages available to them are relatively small, and 6) public policy encourages the use of
15 the class actions to enforce employment laws and protect individuals who, by virtue of their
16 subordinate position, are particularly vulnerable.

17 46. Judicial economy will be served by maintenance of this lawsuit as a class action. To
18 process numerous virtually identical individual cases will significantly increase the expense on the
19 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
20 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
21 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
22 limited to, efficiency, economy, and uniform adjudication with consistent results.

23 47. Notice of a certified class action and any result or resolution of the litigation can be
24 provided to class members by mail, email, publication, or such other methods of notice as deemed
25 appropriate by the Court.

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PAGA ALLEGATIONS

48. The Private Attorneys General Act (“PAGA”), as set forth at California Labor Code § 2698 et seq., is and at all times relevant herein was applicable to Plaintiff’s employment by Defendants.

49. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code § 2699(a).

50. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Labor Code § 2699(c).

51. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor Code § 2699(c). Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with Defendants.

52. As is outlined herein, Defendants violated the Labor Code as to Plaintiff and other current and former employees it employed and/or employs within California. Specifically, Defendants violated Labor Code sections 201-204, 210, 226, 226.7, 227.3, 245 *et seq.*, 510, 512, 1194, 1197 and 2802, as well as the applicable IWC Wage Orders.

53. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the by the Labor Code. When the Labor Code does not provide a civil penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay period and \$200 for each subsequent violation per employee per pay period.

54. Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against

1 whom one or more of the alleged violations was committed. Furthermore, any employee who
2 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

3 55. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Perez, may
4 pursue a civil action arising under PAGA after the following requirements have been met:

5 a. The aggrieved employee shall give written notice by certified mail to
6 the LWDA and the employer (hereinafter "Employee's Notice") of the specific
7 provisions of California Labor Code alleged to have been violated, including the
8 facts and theories to support the alleged violations;

9 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to
10 the employer and the aggrieved employee by certified mail that it does not intend to
11 investigate the alleged violation within 60 days of the postmark date of the
12 Employee's Notice. Upon receipt of the LWDA's Notice, or if the LWDA does not
13 provide notice with 65 calendar days of the postmark date of the Employee's
14 Notice, the aggrieved employee may commence a civil action pursuant to California
15 Labor Code § 2699 to recover civil penalties in addition to any other penalties to
16 which the employee may be entitled.

17 c. For all alleged violations not enumerated in Labor Code § 2699.5,
18 the employer is given thirty-three (33) days to cure and notify the aggrieved
19 employee by certified mail that the violation has been cured. If the violation is not
20 cured, the aggrieved employee may commence a civil action pursuant to California
21 Labor Code § 2699 to recover civil penalties in addition to any other penalties to
22 which the employee may be entitled.

23 56. On January 24, 2025, Plaintiff provided written notice by certified mail to
24 Defendants and by online filing to the LWDA of the specific provisions of the Labor Code alleged
25 to have been violated, including the facts and theories to support the alleged violations.

26 57. As of the filing of this amended complaint, which is more than 65 days after January
27 24, 2025, the LWDA has not responded to Plaintiff's notification or otherwise indicated an intention to
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1 investigate his claims. Plaintiff has therefore satisfied the administrative prerequisites under Labor
2 Code § 2699.3 to bring a civil action to recover penalties against Defendants.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.**
5 **(Failure to Pay Minimum Wage)**
6 **Against Defendants**

7 58. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 59. California Labor Code section 1182.12 establishes the minimum wage for California
11 employees from July 1, 2014, to present.

12 60. Labor Code Section 1194 provides, in relevant part:

13 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
14 than the legal minimum wage ... applicable to the employee is entitled to recover in a
15 civil action the unpaid balance of the full amount of this minimum wage ... including
16 interest thereon, reasonable attorney's fees, and costs of suit.

17 61. Labor Code section 1194.2 provides, in relevant part:

18 In any action under ... Section 1194 to recover wages because of the payment of a wage
19 less than the minimum wage fixed by an order of the commission, an employee shall be
20 entitled to recover liquidated damages in an amount equal to the wages unlawfully
21 unpaid and interest thereon.

22 62. Labor Code section 1197 provides that the minimum wage for employees fixed by the
23 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
24 unlawful

25 63. Pursuant to California Labor Code section 1198, the maximum hours of work and
26 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
27 standard conditions of labor for employees and the employment of any employee for longer hours than
28 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

64. During the relevant time period, and as set forth above, Defendants intentionally and
willfully failed to pay Plaintiff and its other non-exempt California employees for every hour worked
when said employees were required to perform while clocked out for meal periods.

1 65. Wherefore, Plaintiff and the other members of the Non-Exempt Employee Class have
2 been injured as set forth above and request relief as hereafter provided.

3 **SECOND CAUSE OF ACTION**
4 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**
5 **(Failure to Pay Overtime)**
6 **Against Defendants**

7 66. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 67. Pursuant to California Labor Code section 510, any work in excess of eight hours in
11 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
12 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less
13 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours
14 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
16 compensated at the rate of no less than twice the regular rate of pay of an employee.

17 68. Pursuant to California Labor Code section 1198, the maximum hours of work and
18 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees and the employment of any employee for longer hours than
20 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

21 69. As set forth above, during the relevant time period, Plaintiff and FOWS's other non-
22 exempt California employees regularly worked overtime.

23 70. During the relevant time period, Defendants intentionally and willfully failed to pay
24 Plaintiffs and the other members of the Overtime Class the proper overtime wages due to them.

25 71. Wherefore, Plaintiff and the other members of the other members of the Overtime Class
26 have been injured as set forth above and request relief as hereafter provided.

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THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Meal Periods)
Against Defendants

72. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

73. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

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

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 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.

74. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

75. During the relevant time period, Plaintiff and FOWS's other non-exempt California employees were not provided with compliant meal breaks, nor did they receive an additional hour of premium pay for each missed meal break, or premium pay at their regular rate of pay.

76. Wherefore, Plaintiff and the other members of the Meal Break Class have been injured as set forth above and request relief as hereafter provided.

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FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Rest Periods)
Against Defendants

77. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

78. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

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

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 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

79. The applicable Wage Order(s) provides that 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 (4) hours or major fraction thereof..." The applicable Wage Order further provides that "[i]f an employer fails to provide an employee 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."

80. During the relevant time period, Plaintiff and FOWS's other non-exempt California employees were not provided with compliant rest breaks, nor did they receive an additional hour of premium pay for each missed rest break or premium pay at the applicable regular rate of pay.

81. Wherefore, Plaintiff and the other members of the Rest Break Class have been injured as set forth above and request relief as hereafter provided.

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FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTIONS 218, 233, 246
(Failure to Pay Sick Time)
Against Defendants

82. Plaintiff hereby realleges and incorporates by reference each and every allegation above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

83. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

84. The "regular rate of pay" includes all remuneration for employment paid to the employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

85. During the relevant time period, Defendants failed to include commissions, non-discretionary bonuses and/or other items of compensation when determining the "regular rate of pay" for Plaintiff and their other non-exempt employees for purposes of sick time pay.

86. According to the California Supreme Court, sick pay is a form of wages. *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

87. Labor Code section 233 provides that "any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5."

88. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by law. Accordingly, Plaintiff and the Sick Pay Class did not receive the full amount of paid sick time that they were entitled to receive by law and were therefore denied the right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

1 89. Any employer who violates Labor Code section 233 is liable to employees for the
2 greater of one day's pay or actual damages, reasonable equitable relief, and reasonable attorneys'
3 fees and costs. Labor Code §233(d), (e).

4 90. Further, Labor Code section 218 authorizes a private right of action to recover
5 unpaid wages.

6 91. Wherefore, Plaintiff and the other members of the Sick Pay Class have been injured
7 as set forth above and request relief as hereafter provided.

8 **SIXTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE §§ 201, ET SEQ.**
10 **(Failure to Pay All Wages Due and Owing at End of Employment)**
 Against Defendants

11 92. Plaintiff hereby realleges and incorporates by reference each and every allegation set
12 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
13 allegations of this cause of action.

14 93. California Labor Code section 201 provides that if an employer discharges an
15 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

16 94. California Labor Code section 202 requires an employer to pay an employee all earned
17 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
18 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

19 95. As set forth above, Plaintiff and the members of the Waiting Time Penalty Class were
20 not timely paid all of their earned but unpaid wages, including minimum wage, overtime, and meal
21 and rest break premiums, when their employment with Defendants ended.

22 96. Wherefore, Plaintiff and the other members of the Waiting Time Penalty Class have
23 been injured as set forth above and request relief as hereafter provided.

24 **SEVENTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 226(a)**
26 **(Failure to Furnish Accurate Itemized Wage Statements)**
 Against Defendants

27 97. Plaintiff hereby realleges and incorporates by reference each and every allegation set
28 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

1 98. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
2 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
3 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
4 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
5 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and
6 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
7 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of his or her social security number or an employee
9 identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all
10 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
11 each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate
12 of pay and the total hours worked for each temporary services assignment.”

13 99. An employee suffering injury as a result of the knowing and intentional failure by an
14 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
15 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
16 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
17 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
18 attorney’s fees. Labor Code § 226(e)(1).

19 100. An employee is deemed to suffer injury if the employer fails to provide a wage
20 statement or if the employer fails to provide accurate and complete information as required by any one
21 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
22 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
23 during the pay period or any of the other information required to be provided pursuant to Labor Code
24 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
25 name and address of the employer and iv) the name of the employee and the last four digits of his or
26 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
27 (iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain
28 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

1 101. As set forth above, Defendants intentionally and willfully failed to furnish accurate
2 itemized wage statements which complied with Labor Code section 226.

3 102. Wherefore, Plaintiff and the other members of the Wage Statement Class have been
4 injured as set forth above and request relief as hereafter provided.

5 **EIGHTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE SECTION 2802**
7 **(Failure to Reimburse Business Expenses)**

8 103. Plaintiff hereby realleges and incorporates by reference each and every allegation set
9 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
10 allegations of this cause of action.

11 104. Labor Code section 2802 requires employers to indemnify employees for all
12 necessary expenditures or losses incurred in the direct discharge of his or her duties. This includes
13 usage of cellular phones. *Cochran v. Schwan's Home Serv. Inc.* (2014) 228 Cal.App.4th 1137,
14 1144.

15 105. As set forth above, Defendants required Plaintiff and their other non-exempt
16 California employees to incur business expenses, including the use of their personal cellular phones
17 for work purposes, but Defendants, pursuant to Defendants' uniform policy and practice, did not
18 reimburse them at all for these expenses, despite both being aware that they were using their
19 personal cellular phones and requiring their use for work-related communications.

20 106. Wherefore, Plaintiff and the other members of the Non-Exempt Employee Class have
21 been injured as set forth above and request relief as hereafter provided.

22 **NINTH CAUSE OF ACTION**
23 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 ET SEQ.**
24 **(Unfair Business Practices)**
25 **Against Defendants**

26 107. Plaintiff hereby realleges and incorporates by reference each and every allegation set
27 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
28 allegations of this cause of action.

 108. The statutory violations, as alleged above, are unfair business practices within the
meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and

1 include, but are not limited to failing to properly pay minimum and overtime wages and failing to
2 provide complaint meal and rest breaks or to pay premiums associated with the same.

3 109. Wherefore, Plaintiff and the other members of the Class have been damaged as set forth
4 above and request relief as hereafter provided.

5 **TENTH CAUSE OF ACTION**
6 **VIOLATION OF GOVERNMENT CODE § 12940(a)**
7 **(Age Discrimination)**
8 **Against Defendants**

9 110. Plaintiff hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 111. Government Code section 12940(a) prohibits employers from discriminating against an
13 employee because of their age.

14 112. At all times relevant herein, FOWS was Plaintiff's employer and was prohibited from
15 discriminating against Plaintiff because of his age.

16 113. As set forth above, FOWS discriminated against Plaintiff because of his age, denying
17 him employment and advancement opportunities, and ultimately terminating his employment.

18 114. FOWS' conduct against Plaintiff was despicable and done with malice in order to cause
19 injury to Plaintiff, was perpetrated through the fraud of inventing a pretextual reason for his
20 termination, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
21 rights, thereby justifying an award to Plaintiff of punitive damages.

22 115. Wherefore, Plaintiff has been injured and requests relief as set forth below.

23 **ELEVENTH CAUSE OF ACTION**
24 **VIOLATION OF GOVERNMENT CODE § 12940(a)**
25 **(Disability Discrimination)**
26 **Against Defendants**

27 116. Plaintiff hereby realleges and incorporates by reference each and every allegation set
28 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

1 117. Government Code section 12940(a) prohibits employers from discriminating against a
2 qualified employee with a disability with respect to the terms and conditions of employment because
3 of the known or perceived disability of the employee.

4 118. At all times relevant herein, FOWS was Plaintiff's employer and was subject to the
5 provisions of Government Code section 12940(a).

6 119. At all times relevant herein, Plaintiff was qualified to perform the essential functions of
7 his position with or without reasonable accommodation.

8 120. As set forth above, FOWS knew of Plaintiff's disability, but discriminated against him,
9 and ultimately terminated his employment, because of his disability.

10 121. FOWS' discrimination against Plaintiff because of his disability was a proximate cause
11 of harm to Plaintiff.

12 122. FOWS' conduct against Plaintiff was despicable and done with malice in order to cause
13 injury to Plaintiff, was perpetrated through the fraud of inventing a pretextual reason for his
14 termination, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
15 rights, thereby justifying an award to Plaintiff of punitive damages.

16 123. Wherefore, Plaintiff has been injured and seeks relief as set forth below.

17 **TWELFTH CAUSE OF ACTION**
18 **VIOLATION OF GOVERNMENT CODE § 12940(h), (m)(2)**
19 **(FEHA Retaliation)**
20 **Against Defendants**

21 124. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 125. Government Code section 12940(h) prohibits employers from discriminating or
25 retaliating against an employee for opposing practices forbidden by FEHA, including disability and
26 age discrimination.

27 126. Government Code section 12940(m)(2) prohibits employers from discriminating or
28 retaliating against an employee for requesting or using a reasonable accommodation for a disability.

1 127. At all times relevant herein, FOWS was Plaintiff's employer and was prohibited from
2 retaliating against him for complaining of discrimination and/or using a reasonable accommodation of
3 time off from work for his disability.

4 128. Nonetheless, as set forth above, FOWS retaliated against Plaintiff because he
5 complained of discrimination and because he utilized time off work as a reasonable accommodation
6 for his disability.

7 129. FOWS' conduct against Plaintiff was despicable and done with malice in order to cause
8 injury to Plaintiff, was perpetrated through the fraud of inventing a pretextual reason for his
9 termination, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
10 rights, thereby justifying an award to Plaintiff of punitive damages.

11 130. Wherefore, Plaintiff has been injured and requests relief as set forth below.

12 **THIRTEENTH CAUSE OF ACTION**
13 **VIOLATION OF LABOR CODE §1102.5(b)**
14 **(Labor Code Retaliation)**
15 **Against Defendants**

16 131. Plaintiff hereby realleges and incorporates by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 132. Labor Code section 1102.5(b) prohibits employers from retaliating against employees
20 for disclosing information, or because the employer believes that the employee disclosed or may
21 disclose information, to a person with authority over the employee, if the employee has reasonable
22 cause to believe constitutes a violation of state or federal statute, or violation or noncompliance with
23 local, state, or federal rule or regulation.

24 133. At all times relevant herein, FOWS was Plaintiff's employer and was prohibited from
25 retaliating against Plaintiff for disclosing, or believing he would disclose, information that reasonably
26 constituted a violation of the law.

27 134. Nonetheless, as set forth above, FOWS retaliated against Plaintiff for his disclosure to
28 his supervisor, disclosure to human resources, and threatened disclosure to human resources, of the
discriminatory conduct against him.

1 135. FOWS' conduct against Plaintiff was despicable and done with malice in order to cause
2 injury to Plaintiff, was perpetrated through the fraud of inventing a pretextual reason for his
3 termination, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
4 rights, thereby justifying an award to Plaintiff of punitive damages.

5 136. Wherefore, Plaintiff has been injured and requests relief as set forth below.

6 **FOURTEENTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 2698 et seq.**
8 **(PAGA)**
9 **Against Defendants and Does 1-100**

10 137. Plaintiff hereby realleges and incorporates by reference each and every paragraph as
11 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
12 cause of action.

13 138. Plaintiff is an "aggrieved employee" under the PAGA as he was employed by
14 Defendants during the applicable statutory period and suffered one or more of the Labor Code
15 violations outlined herein. Other current and former employees are also aggrieved employees in that
16 one or more of the alleged violations were also committed against them during their time of
17 employment with Defendants.

18 139. Plaintiff seeks to recover, on behalf of and as a proxy for the Labor and Workforce
19 Development Agency (the "LWDA"), the civil penalties provided by the PAGA through a
20 representative action permitted by the PAGA and *Arias v, Sup. Ct. (2009) 46 Cal.4th 969*. Class
21 certification of the PAGA claims is not required.

22 140. Plaintiff seeks to enforce the California Labor Code and related regulations and
23 Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of
24 violations which include, but are not limited to, all of the following: Labor Code sections 201-204,
25 210, 226, 226.7, 227.3, 245 *et seq.*, 510, 512, 1194, 1197 and 2802, as well as the applicable IWC
26 Wage Orders.

27 141. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
28 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one

1 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
2 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

3 142. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
4 recover the civil penalty on behalf of himself or herself and other current or former employees against
5 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
6 in any such action shall be entitled to an award of reasonable attorney's fees and costs

7 143. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set
8 forth above, Plaintiff seeks recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA
9 as set forth.

10 144. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
11 and requests relief as hereafter provided.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiffs prays judgment against Defendants as follows:

14 As to the First through Ninth Causes of Action:

- 15 1. That this Court certify the Class;
- 16 2. That this Court appoint Plaintiff as representative of the Class;
- 17 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 18 4. That this Court award actual, compensatory, special, and general damages as well as
19 restitutionary relief to Plaintiff and the members of the Class;
- 20 5. That this Court award injunctive relief, including that available under Labor Code
21 sections 226(h) and Business and Professions Code Section 17203;
- 22 6. That this Court award penalties and liquidated damages including, but not limited to,
23 those available under Labor Code sections 203, 226, 226.7, 512 and 1194.2;
- 24 7. That this Court award statutory attorneys' fees and costs, including those available
25 under Labor Code sections 218.5, 226(e)(1), and 1194 as well as Code of Civil
26 Procedure section 1021.5;
- 27 8. That this Court award prejudgment and post-judgment interest according to any
28 applicable provision of law or as otherwise permitted by law; and

9. That this Court award such other and further relief as the court deems just and proper.

As to the Tenth through Thirteenth Causes of Action:

1. For compensatory damages, including damages for lost wages and emotional distress;
2. For punitive damages;
3. For statutory attorneys' fees and costs, including but not limited to those available under Government Code § 12965(b) and Labor Code § 1102.5(j);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
5. For such other and further relief as the court deems just and proper.

As to the Fourteenth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§ 210, 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

DATED: May 7, 2025

MAYALL HURLEY P.C.

By _____


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