

For All Purposes

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Case Management Conference

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Attorneys for Plaintiff,
GUADALUPE OCHOA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TULARE**

GUADALUPE OCHOA, an individual,
on his own behalf and on behalf of all
others similarly situated,

Plaintiffs,

vs.

AIEO, LLC, DBA FURNITURE &
HOME DESIGN, a California limited
liability company; IHSSAN F.
ALQUDAH; an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: VCU317201

CLASS ACTION COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR (Cal. *Labor Code* § 226.8; WAGE ORDER NO. 7);**
- 2. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. *Labor Code* §§ 510, 1198; IWC Wage Order No. 7);**
- 3. FAILURE TO PAY MINIMUM WAGES (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 7);**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 7);**
- 5. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 7)**
- 6. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 7);**
- 7. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. *Labor Code* §§201-203);**
- 8. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* § 2802);**

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9. **FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor
Code* §1198.5); and**
**10. UNFAIR COMPETITION (Cal. *Bus. & Prof.
Code* §§17200 *et seq.*)**

DEMAND FOR A JURY TRIAL

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

Gudalupe Ochoa ("Plaintiff") alleges the following:

1. This is a class action brought under California law by an individual who was employed by AIEO LLC ("AIEO") dba Furniture & Home Design ("FHD"), and Ihssan F. Alqudah ("IHSSAN") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendants due to Defendants' systematic failure to pay overtime wages, failure to pay minimum wages, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay wages on termination, failure to reimburse business expenses and failure to allow inspection of employment records.

2. Plaintiffs have worked as employees for Defendants as Warehouse Delivery Drivers and other non-exempt employees in California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendants' efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like his co-workers whom Defendants also employed during the applicable limitations period, spend their workdays delivering appliances throughout California, under illegal and highly regimented circumstances. That regimen results from Defendants' insistence to strictly monitor and curtail labor costs, which Defendants accomplish by not paying for all labor costs, failing to pay overtime, failing to pay minimum wages, refusing to provide meal periods, refusing to provide rest breaks, not paying the required extra hour for missed meal/rest breaks, failing to issue accurate wage statements, failing to pay

1 wages on termination, failing to reimburse business expenses, failing to allow inspection of
2 employment records, and by using other unlawful stratagems to ensure that labor costs remain
3 artificially low.

4 4. Plaintiff brings this class action to recover, among other things, wages and
5 penalties from unpaid wages earned and due, including but not limited to, premium overtime
6 wages, minimum wages, interrupted/missed meal break wages, missed rest break wages, wages
7 due to discharged or quitting employees, penalties for failure to provide accurate itemized wage
8 statements, damages for failure to reimburse business expenses, damages for failure to allow
9 inspection of employment records and interest, attorneys' fees, costs, and expenses.

10 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
11 himself and all members of the class, to compensate these workers for the unpaid wages and to
12 protect current and future workers of Defendants from being subjected to similar wage theft
13 and otherwise unlawful working conditions.

14 6. Plaintiff also brings an action seeking relief for Defendants' violations of
15 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
16 disgorgement of all compensation retained by Defendants as a result of their unlawful and
17 unfair business practices, as well as injunctive relief.

18 7. Pursuant to the California Labor Code, on or about January 21, 2025, Plaintiff
19 filed a notice with the Labor and Workforce Development Agency (LWDA) of his intent to
20 pursue claims against Defendants under the Private Attorney General Act (PAGA). As such,
21 Plaintiff reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint
22 to add a cause of action pursuant to PAGA under Labor Code §§2699 *et seq.*

23 JURISDICTION AND VENUE

24 8. This Court has jurisdiction over this Complaint under Code of Civil Procedure
25 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
26 *Professions Code* §§ 17200 *et seq.* Plaintiff Guadalupe Ochoa brings this Complaint on his
27 own behalf and on behalf of all persons in the Class as defined in paragraph 18 below.
28

9. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Tulare and because Defendants owned and operated their businesses in the County of Tulare.

THE PARTIES

PLAINTIFF

10. At all times relevant hereto, Plaintiff was:

- (a) An individual over age 18 and a resident of Farmersville, California;
- (b) Employed as an hourly employee for Defendants in Visalia, California;
- (c) Was willfully misclassified by Defendants as an independent contractor in violation of Wage Order No.7;
- (d) Did not receive overtime compensation required by *Labor Code* §§510 and 1194 and Wage Order No. 7;
- (e) Did not receive minimum wages due in violation of *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and Wage Order No. 7;
- (f) Did not receive the meal periods required by *Labor Code* §266.7 and Wage Order No. 7;
- (g) Did not receive the rest periods required by *Labor Code* §266.7 and Wage Order No. 7;
- (h) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- (i) Was not paid all wages on termination of employment;
- (j) Was not reimbursed for his necessary business expenses; and
- (k) Was not provided his personnel records. Each of these was a violation of the *Labor Code*.

DEFENDANTS

11. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant FHD is, and at all times mentioned herein was:

- 1 (a) A California limited liability company, with a principal place of business
2 at 26710 S. Mooney Blvd., Visalia, CA 93277. Defendant FHD has
3 been authorized to do business and has been doing business in the
4 County of Tulare;
- 5 (b) The former employer of Plaintiff and the current and former employer of
6 the putative Class members;
- 7 (c) Paid Plaintiff and all Class members on an hourly basis;
- 8 (d) Willfully misclassified Plaintiff and all Class members as independent
9 contractors in violation of Wage Order No. 7;
- 10 (e) Failed to pay Plaintiff and all putative Class members premium overtime
11 wages;
- 12 (f) Failed to provide Plaintiff and all putative Class members with meal and
13 rest periods;
- 14 (g) Failed to provide Plaintiff and all putative Class Members with any
15 itemized wage statements;
- 16 (h) Failed to issue final paychecks timely to Plaintiff and all putative Class
17 members;
- 18 (i) Failed to reimburse Plaintiff and all putative Class members' necessary
19 business expenses; and
- 20 (j) Failed to allow Plaintiff to inspect his employment records. Each of these
21 was a violation of the *Labor Code*.

22 12. Plaintiff is informed and believes, and based on that information and belief,
23 alleges, Defendant IHSSAN is, and at all times mentioned herein was:

- 24 (a) An individual who is the owner/manager of AIEO/FHD and also the
25 former registrant for the fictitious business name Furniture Home &
26 Design;
- 27 (b) The former employer of Plaintiff and the current and former employer of
28 the putative Class members;

- 1 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 2 (d) Willfully misclassified Plaintiff and all putative Class members as
- 3 independent contractors in violation of Wage Order No.7;
- 4 (e) Failed to pay Plaintiff and all putative Class members premium overtime
- 5 wages;
- 6 (f) Failed to provide Plaintiff and all putative Class members with meal and
- 7 rest periods;
- 8 (g) Failed to provide Plaintiff and all putative Class Members with any
- 9 accurate itemized wage statements;
- 10 (h) Failed to issue final paychecks timely to Plaintiff and all putative Class
- 11 Members;
- 12 (i) Failed to reimburse Plaintiff and all putative Class members for their
- 13 necessary business expenses; and
- 14 (j) Failed to allow Plaintiff to inspect his employment records. Each of these
- 15 was a violation of the *Labor Code*.

16 13. The true names and capacities, whether individual, corporate, subsidiary,

17 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown

18 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*

19 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true

20 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

21 14. Plaintiff is informed and believes, and based on that information and belief

22 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which

23 reside in or are authorized to do, or are otherwise doing, business in the State of California.

24 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and

25 conduct business in the County of Tulare. Each of the Defendants DOES 1 through 100 was the

26 managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego

27 and/or representative of one or more of the other Defendants named herein, and acting with

28 permission, authorization, and/or ratification and consent of the other Defendants.

15. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 100, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

16. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

17. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendants, and each of them, represented a unified body so that the actions of one Defendant was accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

18. The Class (“the Class”) is defined as follows:

(a) “All current and former employees who were hourly paid employees of Defendants and worked for Defendants in California at any time during the

1 period commencing on the date that is four (4) years prior to the filing of this
2 Complaint and continuing through the present date (the “Class Period”).”

3 (b) “All persons who were hourly paid employees of Defendants and worked for
4 Defendants in California and left the employ of Defendants at any time during
5 the period commencing on the date that is within one (1) year prior to the filing
6 of this Complaint and continuing through the present date (the “Class Period”).”

7 19. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
8 amend or modify the Class description with greater specificity or further division into
9 subclasses or limitation to particular issues.

10 **B. Maintenance of the Action**

11 20. Plaintiff brings this action individually and on behalf of himself and as
12 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
13 and 17204 and *Code of Civil Procedure* § 382.

14 **C. The Class Requisites**

15 21. At all material times, Plaintiff was a member of the Class.

16 22. The Class action meets the statutory prerequisites for maintaining a class action
17 under Code of Civil Procedure § 382 in that:

18 (a) The persons who comprise the Class are so numerous that the joinder of all
19 those persons is impracticable and the disposition of their claims as a Class
20 will benefit the parties and the Court;

21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
22 that are raised in this Complaint are common to the Class and will apply
23 uniformly to every Class member;

24 (c) The claims of the representative Plaintiff are typical of the claims of each
25 Class member. Plaintiff, like all Class members, has sustained damages
26 arising from Defendants’ violations of the laws of the State of California.
27 Plaintiff, and the Class members, were and are similarly or identically
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1 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
2 pattern of misconduct engaged in by the Defendants;

- 3 (d) The representative Plaintiff has, and will continue to, fairly and adequately
4 represent and protect the interests of the Class and has retained counsel
5 who are competent and experienced in class action litigation. There are no
6 material conflicts between the claims of the representative Plaintiff and the
7 Class members that would make class certification inappropriate. Counsel
8 for the Class will vigorously assert the claims of all Class members.

9 23. The persons who comprise the Class are so numerous that joining all of them is
10 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
11 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
12 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
13 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
14 Plaintiff are experienced, qualified and generally able to conduct complex class action
15 litigation.

16 24. The Court should permit the action to be maintained as a class action under
17 *Code of Civil Procedure* § 382 because:

- 18 (a) The questions of law and fact common to the Class predominate over any
19 question affecting only individual members:
20 (b) A class action is superior to any other available method for fairly and
21 efficiently adjudicating the claims of the Class;
22 (c) The Class members are so numerous that it is impractical to bring all of
23 them before the Court;
24 (d) Plaintiff and other Class members will not be able to obtain effective and
25 economic legal redress unless the action is maintained as a class action;
26 (e) There is a community of interest in obtaining appropriate legal and
27 equitable relief for the statutory violations, and in obtaining adequate
28 compensation for the damages and injuries for which Defendant is

1 responsible in an amount sufficient to adequately compensate the Class
2 members;

3 (f) Without Class certification, the prosecution of separate actions by
4 individual Class members would create a risk of:

5 i. Inconsistent or varying adjudications for individual Class members
6 that would establish incompatible standards of conduct for
7 Defendants; and/or,

8 ii. Adjudication for individual Class members that would, as a
9 practical matter, dispose of other non-party members' interests, or
10 that would substantially impair or impede the non-parties' ability
11 to protect their interests, by, for example, potentially exhausting
12 the funds available from Defendants, and

13 (g) Defendants have acted or refused to act on grounds generally applicable
14 to the Classes, making final injunctive relief appropriate for the Class, as
15 a whole.

16 25. Plaintiff contemplates eventually issuing notice to the proposed Class Members
17 that would set forth the subject and nature of the action. The Defendants' own business records
18 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
19 any further notices may be required, Plaintiff would contemplate using additional media and/or
20 mailing.

21 GENERAL ALLEGATIONS

22 26. At all times material hereto, Defendant FHD, has been and is, an appliance
23 company.

24 27. At all times material hereto Defendant IHSSAN, has been and is, the
25 owner/manager of AIEO/FHD and the former registrant for Furniture & Home Design.

26 28. Plaintiff and members of the Class were employed as Warehouse Delivery
27 Drivers by Defendants in California at various times during the Class Period.

28 THE CONDUCT

1 29. Plaintiff seeks relief from Defendants' uniform policies and practices of denying
2 Plaintiff and members of the Class wages and compensation owed under California law.

3 30. Starting in or about April 14, 2024 and continuing to December 2, 2024,
4 Defendants employed Plaintiff on an hourly basis as a Warehouse Delivery Driver in
5 California.

6 31. While employed by Defendants as a Warehouse Delivery Driver, Plaintiff was
7 paid approximately \$12.00 per hour.

8 32. The employment by Defendants of the Class Members, and each them, is
9 governed by Industrial Welfare Commission Wage Order No. 7, which covers those persons
10 employed in the mercantile industry.

11 **MISSCLASSIFICATION AS AN INDEPENDENT CONTRACTOR**

12 33. Plaintiff and Class members were misclassified as independent contractors.
13 They were paid in cash and not provided any paystubs.

14 **OFF-THE-CLOCK WORK**

15 34. Employers must compensate non-exempt employees for "off-the-clock" work
16 (before punching in or after punching out on a time clock) if the employers knew or should
17 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
18 (2000) 22 Cal. 4th 575, 585.

19 35. Defendants required Plaintiff and the Class to regularly perform compensable
20 tasks pre-shift off-the-clock for which they did not receive any compensation. Specifically, at
21 all times relevant, Plaintiff and Class members were required by management to work off the
22 clock after clocking out at the end of their shifts. Defendants were aware of Plaintiff and Class
23 members' off the clock work.

24 36. As a result, and because they improperly treated such post-shift time as non-
25 compensable, Defendants failed to compensate Plaintiff and the Class for such time.

26 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

27 37. Under California law, non-exempt employees as defined by Wage Order No. 7,
28 are entitled to premium wages for overtime worked. Under California law, an hourly paid

1 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
2 exceed 40 hours of work in a week or work seven days in a row.

3 38. Under California law, non-exempt employees as defined by IWC Wage Order
4 No. 7 are entitled to minimum wages. Labor Code Section 1197 states the California
5 requirement that employees must be paid at least the minimum wage fixed by the Commission
6 or by any applicable state or local law, and any payment of less than the minimum wage is
7 unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the
8 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
9 amount of this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage
10 Order No. 7-2001, obligates employers to pay each employee minimum wages for all hours
11 worked.

12 39. These minimum wage standards apply to each hour employees worked or were
13 subject to control by the employer for which they were not paid. Therefore, an employer’s
14 failure to pay for any particular hour of time worked by an employee or subject to the
15 employer’s control is unlawful, even if averaging an employee’s total pay over all hours
16 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
17 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

18 40. Defendants required Plaintiff and the Class to regularly perform compensable
19 tasks post-shift off-the-clock for which they did not receive any compensation. Class members
20 are entitled to overtime pay for any time spent performing off the clock work.

21 41. Plaintiff and Class members routinely worked overtime hours, but were not paid
22 premium pay for their overtime hours.

23 42. Plaintiff and the Class were not paid minimum wages due to non-compliant
24 meal/rest breaks.

25 43. At all times during the relevant time period, Plaintiff and the Class routinely
26 worked schedules such that they were due pay at overtime and minimum wage rates. During
27 this period, it was the practice and policy of Defendants to not pay employees’ overtime and
28 minimum wages. Monies for unpaid overtime and minimum wages remain due and owing.

1 **LATE AND/OR MEAL BREAKS NOT AFFORDED**

2 44. Under California law, non-exempt employees as defined by Wage Order No. 7,
3 are entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
4 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.
5 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
6 requisite rest and/or meal periods are not provided.
7

8 45. Plaintiff and Class Members' meal breaks were at times afforded late and/or
9 meal breaks were not afforded.

10 46. Defendants' policies and procedures were applied to all non-exempt employees
11 in California and resulted in non-exempt employees working time which was not compensated
12 by any wages in violation of Labor Code sections 510, 1194 and IWC Wage Order No. 7. As a
13 result, Defendants owe wages at the legal overtime rate for unpaid overtime to each of their
14 California non-exempt employees whose daily hours were reduced even though their meals
15 periods were late and/or were never afforded.

16 47. Defendants failed to ensure that Plaintiff and members of the Class recorded their
17 meal breaks. Plaintiff did not record his meal breaks' start and stop times.

18 48. Defendants' policies and procedures were applied to all non-exempt employees
19 in California and resulted in non-exempt employees working time which was not compensated
20 by any wages in violation of Labor Code sections 510, 1194 and IWC Wage Order No. 7. As a
21 result, Defendants owe wages at the legal overtime rate for unpaid overtime to each of their
22 California non-exempt employees whose daily hours were automatically reduced even though
23 they did not take meals periods and/or their meal periods were not compliant.

24 **REST BREAKS NOT AFFORDED**

25 49. Plaintiff and Class members were not afforded rest breaks.

26 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

1 50. Since Defendants failed to issue any wage statements to the employees,
2 Defendants did not comply with Labor Code §226 and California Industrial Welfare
3 Commission (“IWC”) Wage Order No. 7.

4 **FAILURE TO PAY WAGES ON TERMINATION OF EMPLOYMENT**

5 51. As a further result of Defendants’ failure to pay employees at required overtime,
6 minimum wage rates and failure to afford meal/rest breaks, when the employees left their
7 employ, they were not timely paid all wages due them, as required by Labor Code §§ 201, 202
8 and Wage Order No. 7. Further, it was the practice of Defendants to not pay employees the
9 final paychecks within the time periods mandated by Labor Code §§201, 202 and Wage Order
10 7.

11 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

12 52. Defendants violated Labor Code section 2802 by failing to reimburse Plaintiff
13 and Class members for their necessary business expenses, such as cell phone use. Defendant
14 required Plaintiff and Class members to use their personal cell phones for work-related
15 activities. Further, Plaintiff and Class members were required to use their personal tools, such
16 as drills, and were not reimbursed therefor.

17 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

18 53. Defendants failed to allow Plaintiff and Class members to timely inspect their
19 records and payroll files.

20 **FIRST CAUSE OF ACTION**

21 **WILLFUL MISCLASSIFICATION AS AN INDEPENDENT CONTRACTOR**

22 **(Cal. Labor Code § 226.8; Wage Order No. 7 By Plaintiffs Against all Defendants and**
23 **Does 1-100)**

24 54. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 55. Defendants misclassified Plaintiff and Class members as independent
27 contractors rather than as employees in violation of IWC Wage Order No. 7, for their own
28 financial benefit.

1 56. IWC Wage Order No. 7, Section 2 defines “employ” as meaning to engage,
2 suffer, or permit to work.

3 57. Labor Code § 2750.5 provides in pertinent part: “Proof of independent
4 contractor status includes satisfactory proof of these factors:

5 a. That the individual has the right to control and discretion as to the manner of
6 performance of the contract for services in that the result of the work and not the means
7 by which it is accomplished is the primary factor bargained for;

8 b. That the individual is customarily engaged in an independently established business;
9 and

10 c. That the individual's independent contractor status is bona fide and not a subterfuge
11 to avoid employee status. A bona fide independent contractor status is further evidenced
12 by the presence of cumulative factors such as substantial investment other than personal
13 services in the business, holding out to be in business for oneself, bargaining for a
14 contract to complete a specific project for compensation by project rather than by time,
15 control over the time and place the work is performed, supplying the tools and
16 instrumentalities normally and customarily provided by employees, hiring employees,
17 performing work that is not ordinarily in the course of the principal's work performing
18 work that requires ‘a particular skill holding a license pursuant to the Business and
19 Professions Code, the intent by the parties that the work relationship is of an
20 independent contractor status, or that the relationship is not severable or terminable at
21 will by the principal but gives rise to an action for the breach of contract.”

22 58. California Labor Code section 558 provides in pertinent part:

23 (a) Any employer or other person acting on behalf of an employer who
24 violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the
26 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

27 (1) For any initial violation, fifty dollars (\$50) for each underpaid
28 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was
3 underpaid in addition to an amount sufficient to recover underpaid
wages.

4 (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee...

6 (c) The civil penalties provided for in this section are in addition to any
7 other civil or criminal penalty provided by law.

8 59. Pursuant to Cal. Labor Code §558.1:

9 (a) Any employer or other person acting on behalf of an employer, who
10 violates, or causes to be violated, any provision regulating...hours and days of work in any
11 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
12 226, 226.7...may be held liable as the employer for such violation.

13 (b) For purposes of this section, the term "other person acting on behalf of an
14 employer" is limited to a natural person who is an owner, director, officer, or managing agent
15 of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of
16 Section 3294 of the Civil Code.

17 (c) Nothing in this section shall be construed to limit the definition of employer
18 under existing law.

19 60. Ihssan is a person acting on behalf of AIEO/FHD and is therefore liable to
20 Plaintiff as an employer. Ihssan caused the laws relating to misclassification to be violated.

21 61. Defendants, as a matter of company policy and procedure, willfully
22 misclassified Plaintiff and Class members as "independent contractors" to avoid the payment of
23 wages and other benefits in violation of the Labor Code and IWC Wage Order No. 7 and acted
24 as if they had the right to and, in fact, did control the work performed by, and/or the manner
and/or means in which the work was performed by Plaintiff and Class members.

25 62. Additionally, Plaintiff and Class members performed work as Warehouse
26 Delivery Drivers that was within the usual course of Defendants' business.

27 63. Under Labor Code § 226.8, it is unlawful for any person or employer to engage
28 in the "willful misclassification" of an individual as an independent contractor. "Willful

1 misclassification” is defined as “avoiding employee status for an individual by voluntarily and
2 knowingly misclassifying that individual as an independent contractor.” Labor Code
3 §226.8(i)(4).

4 64. Defendants' practice was unlawful and entitles Plaintiff and Class members to
5 recover in a civil action a civil penalty between \$5,000 and \$25,000 in accordance with Labor
6 Code § 226.8(b)-(c), as well as the appropriate withholding of federal, state, and local income
7 taxes based upon a flat withholding rate for supplemental wage payments in accordance with
8 Treas. Re. §§ 31.3402(g)-1(a)(2) as amended or supplemented, and any corresponding state or
9 local law, and the Plaintiff and Class members' share of FICA, Medicare, and state and local
10 employment taxes that were improperly not paid by Defendants as a result of the unlawful
11 “independent contractor” classification.

12 65. Additionally, employers who violate the new law are required to post a
13 “prominent” notice on their public website, or in an area accessible to all employees and the
14 general public, stating, among other things, that they have “committed a serious violation of the
15 law” by willfully misclassifying employees, and directing any other employees who feel they
16 have been misclassified to contact the Labor and Workforce Development Agency, pursuant to
17 Labor Code § 226.8(e).

18 66. For Defendants' violation of Labor Code § 226.8, Plaintiff and Class members
19 seek civil penalties, interest, attorneys' fees and costs, according to proof, and other remedies
20 available pursuant to Labor Code § 226.8.

21 67. Lastly, under Labor Code § 2753, paid advisors (excluding attorneys and
22 employees of the company) who “knowingly advise” employers to misclassify workers are
23 jointly and severally liable for any penalties imposed on the employer as a result of the
24 misclassification.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

27 **(Labor Code §§510, 558, 1194.3 and Wage Order No. 7 By Plaintiffs Against all**
28 **Defendants and Does 1-100)**

1 68. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 69. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab.
4 Code §§510, 1194, and 1198, and IWC Wage Order No. 7, Defendants were required to
5 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
6 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
7 hours on the seventh (7th) consecutive day of any work week.

8 70. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
9 who had not been paid overtime compensation could recover the unpaid balance of the full
10 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
11 fees and costs of suit.

12 71. Pursuant to IWC Wage Order No. 7-2001, § 3, "Employment beyond eight (8)
13 hours in any workday is permissible provided the employee is compensated for such overtime
14 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
15 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
16 workday...

17 72. California Labor Code section 558 provides in pertinent part:

18 (a) Any employer or other person acting on behalf of an employer who
19 violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the
21 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

22 (1) For any initial violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

24 (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recover underpaid
wages.

27 (3) Wages recovered pursuant to this section shall be paid to the affected
28 employee...

1 (c) The civil penalties provided for in this section are in addition to any
2 other civil or criminal penalty provided by law.

3 73. California Labor Code section 558 provides in pertinent part:

4 (a) Any employer or other person acting on behalf of an employer who
5 violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the
Industrial Welfare Commission shall be subject to a civil penalty as
follows:

7 (1) For any initial violation, fifty dollars (\$50) for each underpaid
8 employee for each pay period for which the employee was underpaid in
9 addition to an amount sufficient to recover underpaid wages.

10 (2) For each subsequent violation, one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee was
12 underpaid in addition to an amount sufficient to recover underpaid
wages.

13 (3) Wages recovered pursuant to this section shall be paid to the affected
14 employee...

15 (c) The civil penalties provided for in this section are in addition to any
16 other civil or criminal penalty provided by law.

17 74. Pursuant to Cal. Labor Code §558.1:

18 (a) Any employer or other person acting on behalf of an employer, who
19 violates, or causes to be violated, any provision regulating...hours and days of work in any
20 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
226, 226.7...may be held liable as the employer for such violation.

21 (b) For purposes of this section, the term "other person acting on behalf of an
22 employer" is limited to a natural person who is an owner, director, officer, or managing agent
23 of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of
24 Section 3294 of the Civil Code.

25 (c) Nothing in this section shall be construed to limit the definition of employer
26 under existing law.

27 75. Ihssan is a person acting on behalf of AIEO/FHD and is therefore liable to
28 Plaintiff as an employer. Ihssan caused the laws overtime to be violated.

1 85. *Labor Code* § 1197 states the California requirement that employees must be
2 paid at least the minimum wage fixed by the Commission, and any payment of less than the
3 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
4 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
5 the full amount of this minimum wage.” IWC Wage Order 7-2001 also obligates employers to
6 pay each employee minimum wages for all hours worked. These minimum wage standards
7 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
8 failure to pay for any particular hour of time worked by an employee is unlawful, even if
9 averaging an employee’s total pay over all hours worked, paid or not, results in an average
10 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
11 (2005).

12 86. Pursuant to Wage Order No. 7, Defendants are required to pay the members of
13 the Class for all hours worked, meaning the time during which an employee is subject to the
14 control of an employer, including all the time the employee is suffered or permitted to work,
15 whether or not required to do so.

16 87. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
17 and the standard conditions of labor fixed by the commission shall be the maximum hours of
18 work and the standard conditions of labor for employees. The employment of any employee for
19 longer hours than those fixed by the order or under conditions of labor prohibited by the order
20 is unlawful.”

21 88. California Labor Code section 558 provides in pertinent part:

22
23 (a) Any employer or other person acting on behalf of an employer who
24 violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the
Industrial Welfare Commission shall be subject to a civil penalty as
follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in
28 addition to an amount sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each
2 underpaid employee for each pay period for which the employee was
3 underpaid in addition to an amount sufficient to recover underpaid
wages.

4 (3) Wages recovered pursuant to this section shall be paid to the affected
5 employee...

6 (c) The civil penalties provided for in this section are in addition to any
7 other civil or criminal penalty provided by law.

8 89. Pursuant to Cal. Labor Code §558.1:

9 (a) Any employer or other person acting on behalf of an employer, who
10 violates, or causes to be violated, any provision regulating...hours and days of work in any
11 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
12 226, 226.7...may be held liable as the employer for such violation.

13 (b) For purposes of this section, the term “other person acting on behalf of an
14 employer” is limited to a natural person who is an owner, director, officer, or managing agent
15 of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of
16 Section 3294 of the Civil Code.

17 (c) Nothing in this section shall be construed to limit the definition of employer
18 under existing law.

19 90. Ihssan is a person acting on behalf of AIEO/FHD and is therefore liable to
20 Plaintiff as an employer. Ihssan caused the laws relating to minimum wages to be violated.

21 91. Defendants failed to satisfy minimum wage requirements because they did not
22 provide compliant meal/rest breaks to Plaintiff and the Class. Further, Plaintiff and Class
23 members were paid below the minimum wage rate. The minimum wage rate in Tulare County
24 in 2024 was \$16.00 per hour, but Plaintiff and Class members were only paid \$12.00 per hour.

25 92. Defendants’ pattern, practice and uniform administration of corporate policy
26 regarding illegal employee compensation as described herein is unlawful and creates an
27 entitlement, pursuant to Labor Code § 218, to recovery by Plaintiff and the members of the
28

1 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
2 the appropriate rate.

3 93. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
4 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
5 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
6 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
7 the time associated with the overtime for which they received no compensation. *See Sillah v.*
8 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
9 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
10 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
11 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

12 94. Plaintiff and the other Class Members suffered and continue to suffer losses
13 related to the use and enjoyment of compensation due and owing to them as a direct result of
14 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to
15 proof at trial and within the jurisdictional limitations of this Court.

16 95. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
17 Class are entitled to recover the unpaid balances of the minimum wages Defendants owe them,
18 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
19 proof.

20 **FOURTH CAUSE OF ACTION**

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

22 **(IWC Wage Order No. 7; Labor Code §§ 226.7, 512 By Plaintiffs Against all Defendants**
23 **and Does 1 through 100)**

24 96. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 97. California Labor Code §226.7(a) prohibits an employer from requiring an
27 employee to work during any meal period mandated by an applicable Industrial Wage Order.
28 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an

1 employee to work during a meal or rest break or recovery period mandated pursuant to an
2 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
3 Commission..."

4 98. California Labor Code § 1198 makes unlawful the employment of an employee
5 under conditions the IWC prohibits.

6 99. IWC Order No. 7-2001(11)(A) provides, in relevant part: "No employer shall
7 employ any person for a work period of more than five (5) hours without a meal period of not
8 less than 30-minutes, except that when a work period of not more than six (6) hours will
9 complete the day's work the meal period may be waived by mutual consent of the employer and
10 the employee."

11 100. IWC Order No. 7-2001 (11)(c) further provides, in relevant part: "Unless the
12 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
13 considered an 'on duty' meal period and counted as time worked."

14 101. Section 512(a) of the California Labor Code provides, in relevant part, that:

15 An employer may not employ an employee for a work period of more than five
16 hours per day without providing the employee with a meal period of not less
17 than 30-minutes, except that if the total work period per day of the employee is
18 no more than six hours, the meal period may be waived by mutual consent of
19 both the employer and employee. An employer may not employ an employee
20 for a work period of more than 10 hours per day without providing the
21 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.

22 102. The Labor Code and Wage Order provisions cited above require California
23 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
24 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
25 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
26 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
27 the fifth hour of their shifts.

28 103. California Labor Code section 558 provides in pertinent part:

1 (a) Any employer or other person acting on behalf of an employer who
2 violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the
4 Industrial Welfare Commission shall be subject to a civil penalty as
5 follows:

6 (1) For any initial violation, fifty dollars (\$50) for each underpaid
7 employee for each pay period for which the employee was underpaid in
8 addition to an amount sufficient to recover underpaid wages.

9 (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was
11 underpaid in addition to an amount sufficient to recover underpaid
12 wages.

13 (3) Wages recovered pursuant to this section shall be paid to the affected
14 employee...

15 (c) The civil penalties provided for in this section are in addition to any
16 other civil or criminal penalty provided by law.

17 104. Pursuant to Cal. Labor Code §558.1:

18 (a) Any employer or other person acting on behalf of an employer, who
19 violates, or causes to be violated, any provision regulating...hours and days of work in any
20 order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203,
21 226, 226.7...may be held liable as the employer for such violation.

22 (b) For purposes of this section, the term "other person acting on behalf of an
23 employer" is limited to a natural person who is an owner, director, officer, or managing agent
24 of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of
25 Section 3294 of the Civil Code.

26 (c) Nothing in this section shall be construed to limit the definition of employer
27 under existing law.

28 105. Ihssan is a person acting on behalf of AIEO/FHD and is therefore liable to
Plaintiff as an employer. Ihssan caused the laws relating to meal periods to be violated.

106. Plaintiff and the members of the Class's meal periods were afforded late and/or
not afforded.

1 107. Under California law, employers must also record their employees' meal
2 periods: "Every employer shall keep accurate information with respect to each employee,
3 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
4 operations cease ... need not be recorded." IWC Order No. 7, § (7)(A)(3). Where the employer
5 has failed to keep records required by statute, the consequences of such failure should fall on
6 the employer, not the employee. In such a situation, imprecise evidence by the employee can
7 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
8 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
9 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
10 known its employees were regularly missing meal periods during the Class Period.

11 108. Plaintiff and Class members did not record the start and end times of their meal
12 periods in violation of *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58.

13 109. Further, Defendants have a policy or practice of failing to ensure that Plaintiff
14 and members of the class take the meal periods required by California Labor Code §226.7 and
15 IWC Wage Order No. 7-2001 §11.

16 110. By their actions in not affording Plaintiff and Class members meal periods
17 and/or not affording them compliant meal periods, Defendants violated Cal. Lab. Code
18 §226.7(b) and section 11 of Wage Order No. 7 in the amount of one additional hour of pay at
19 the employee's regular rate of compensation for each work period during each day in which
20 Defendant failed to provide employees with statutory off-duty meal periods.

21 111. Defendants also have a policy or practice of failing to pay each of their
22 employees who was not provided with a meal period as required an additional one hour of
23 compensation at each employee's regular rate of pay.

24 112. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
25 bring a private right of action to recover wages due based on the deprivation of timely meal
26 periods under Cal. Labor Code § 226.7(b).

27 113. As a direct and proximate result of Defendants' unlawful conduct as alleged
28 herein, Plaintiff and members of the Class have sustained economic damages, including but not

1 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
2 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
3 relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 7.

4 **FIFTH CAUSE OF ACTION**

5 **FOR FAILURE TO PROVIDE REST PERIODS**

6 **(Labor Code § 226.7 and IWC Wage Order No. 7 By Plaintiffs Against all Defendants and**
7 **Does 1 through 100)**

8 114. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 115. Labor Code § 226.7 and IWC Wage Order No. 7 provide that employers shall
11 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
12 per four hours of work, or major fraction thereof.

13 116. Labor Code § 226.7 and IWC Wage Order No. 7 provide that if an employer
14 fails to provide an employee with rest periods in accordance with those provisions, the
15 employer shall pay the employee one hour of pay at the employee's regular rate of
16 compensation for each workday that the rest periods were not so provided.

17 117. California Labor Code section 558 provides in pertinent part:

18 (a) Any employer or other person acting on behalf of an employer who
19 violates, or causes to be violated, a section of this chapter or any
20 provision regulating hours and days of work in any order of the
21 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

22 (1) For any initial violation, fifty dollars (\$50) for each underpaid
23 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

24 (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was
26 underpaid in addition to an amount sufficient to recover underpaid
wages.

27 (3) Wages recovered pursuant to this section shall be paid to the affected
28 employee...

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

118. Pursuant to Cal. Labor Code §558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7...may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

119. Ihssan is a person acting on behalf of AIEO/FHD and is therefore liable to Plaintiff as an employer. Ihssan caused the laws relating to rest periods to be violated.

120. Defendants have intentionally and improperly denied any rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and IWC Wage Order No. 7.

121. At all times relevant hereto, Plaintiff and members of the Class have worked 10 or more hours daily.

122. At all times relevant hereto, Defendants failed to provide rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 7. Plaintiff and Class were not afforded any rest breaks.

123. By virtue of Defendants’ unlawful failure to provide rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

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SIXTH CAUSE OF ACTION
FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE
ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiffs Against all Defendants and Does 1 through 100)

124. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

125. Pursuant to IWC Wage Order No. 7, Defendants were the employers of Plaintiff and the Class.

126. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 7-2001 section 7, Defendants are required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

127. Defendants are further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

128. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

129. Notwithstanding these provisions. Defendants have engaged in a uniform practice of refusing to maintain and provide the accurate records and wage statements required by California law.

130. Throughout the Class Period, Defendants intentionally and knowingly failed to provide Plaintiff and other members of the Class with any weekly itemized wage statements. Plaintiff and Class members were paid in cash.

1 131. As a result, Plaintiff and members of the Class have been injured by having been
2 deprived of the true facts pertaining to their compensation and employment.

3 132. Plaintiff and members of the Class were damaged by these failures because,
4 among other things, the failures led them to believe that they were not entitled to overtime
5 compensation, minimum wages, pay for meal and rest periods not provided, even though they
6 were so entitled and these failures hindered them from determining the amounts of wages owed
7 to them.

8 133. Plaintiff and members of the Class are entitled to the amounts provided in Labor
9 Code §226(e), plus attorneys' fees and costs.

10 134. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
11 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
12 provided by law for Defendants' improper conduct.

13 **SEVENTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES ON TERMINATION OF EMPLOYMENT**

15 **(Cal. Labor Code §§201-203 By Plaintiffs Against all Defendants and Does 1 through 100)**

16 135. Plaintiff and the Class reallege and incorporate by reference all of the allegations
17 set forth in this Complaint.

18 136. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
19 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
20 from employment, unpaid wages are due and payable within 72 hours of resignation.

21 137. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
22 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
23 paid, not to exceed thirty days.

24 138. Plaintiff and the Class were discharged and/or resigned from Defendants'
25 employ and Defendants willfully failed to pay Plaintiff and the Class wages due them due to
26 Defendants' failure to pay overtime, minimum wages, and premium pay for meal/rest breaks
27 not afforded.

28

1 139. Defendants terminated Plaintiff on December 2, 2024, yet failed to pay him the
2 wages due to him.

3 140. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
4 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 **(Cal. Lab. Code §2802, By Plaintiffs Against all Defendants and Does 1 through 100)**

8 141. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 142. Labor Code §2802 requires employers to indemnify employees for all necessary
11 expenditures incurred by employees in the discharge of their duties.

12 143. At all times relevant herein, Defendants were aware that Plaintiff and Class
13 members were using their cell phones and using their personal tools for business, but failed to
14 indemnify Plaintiff and Class members for all their business-related expenses, including wear
15 and tear expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and
16 thereon alleges that at all relevant times, Defendants maintained a practice of not reimbursing
17 Plaintiff and Class Members for their work-related expenses that they incurred in using their
18 cell phones and tools for work-related purposes.

19 144. As a result of Defendants' conduct, Plaintiff and Class members suffered
20 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
21 business-related expenses incurred in the discharge of their duties.

22 145. Pursuant to Labor Code §2802, Plaintiff and Class members are entitled to
23 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
24 costs of suit.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

27 **(Labor Code §1198.5 By Plaintiffs Against all Defendants and Does 1 through 100)**

1 146. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 147. California Labor Code Section 1198.5 provides:
4

5 (a) Every current and former employee, or his or her representative, has the
6 right to inspect and receive a copy of the personnel records that the
7 employer maintains relating to the employee's performance or to any
grievance concerning the employee.

8 (b) The employer shall make the contents of those personnel records available
9 for inspection to the current or former employee, or his or her
10 representative, at reasonable intervals and at reasonable times, but not later
11 than 30 calendar days from the date the employer receives a written request,
12 unless the current or former employee, or his or her representative, and the
13 employer agree in writing to a date beyond 30 calendar days to inspect the
14 records, and the agreed-upon date does not exceed 35 calendar days from
15 the employer's receipt of the written request to inspect the records. Upon a
written request from a current or former employee, or his or her
representative, the employer shall also provide a copy of the personnel
records,..... later than 30 calendar days from the date the employer receives
the request...

16 (k) If an employer fails to permit a current or former employee, or his or her
17 representative, to inspect or copy personnel records within the times specified I
18 this section... the current or former employee may recover a penalty of seven
hundred fifty dollars (\$750) from the employer.

19 (1) A current or former employee may also bring an action for injunctive relief
20 to obtain compliance with this section, and may recover costs and reasonable
attorney's fees in such an action.

21 148. Additionally, pursuant to Wage Order No. 7, at section 7 re: Records, employers
22 are required to keep accurate payroll records on each employee, and such records must be
23 made readily available for inspection by the employee upon reasonable request. The employer
24 must also maintain accurate production records.

25 149. On or about January 21, 2025, Plaintiff's counsel issued a written request to
26 Defendants for copies of his personnel records.

27 150. Under California Labor Code Sections 226, 432 and 1198.5, such records were
28 to include all records relating to Plaintiff's hours worked, wage statements and compensation.

1 Plaintiff's counsel and Defendants did not enter into an agreement to enlarge the time for
2 Defendants' compliance, and Defendants have failed and refused to permit Plaintiff copies of
3 his records.

4 151. As a direct result and consequence of Defendants' failure and refusal to permit
5 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
6 decree mandating Defendants' compliance. Plaintiff has suffered and will suffer harm as a
7 result of Defendants' ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
8 penalty of \$750 based upon Defendants' violation of §1198.

9 **TENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against all Defendants and**
12 **Does 1 through 100)**

13 152. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this Complaint.

15 153. Pursuant to IWC Wage Order No. 7, Defendants were the employers of Plaintiff
16 and the Class. Defendants are also "person(s)" as that term is defined in Business & Professions
17 Code §17021.

18 154. The Business & Professions Code defines unfair competition as any unlawful,
19 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
20 described herein, Defendants have engaged in unfair and unlawful practices by (1) willfully
21 misclassifying Plaintiff and Class members as independent contractors; (2) failing to pay
22 Plaintiff and the Class overtime compensation; (3) failing to pay minimum wages; (4) failing to
23 pay Plaintiff and the Class for meal periods not provided, (5) failing to pay Plaintiff and the
24 Class for rest periods not provided, (6) failing to furnish Plaintiff and the Class with any
25 accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial
26 Welfare Commission requirements, (7) failing to pay Plaintiff and the Class all wages due on
27 termination of employment, (8) failing to reimburse Plaintiff and Class members for their
28

1 necessary business expenses, and (9) failing to provide personnel records, all in violation of
2 Business & Professions Code §§ 17200 *et seq.*

3 155. By and through the unfair and unlawful business practices described herein,
4 Defendants have obtained valuable property, money and services from the Plaintiff and the
5 Class and has deprived them of valuable rights and benefits guaranteed by law all to the
6 detriment of Plaintiff and the Class.

7 156. All the acts described herein are violations of, among other things, the Labor
8 Code and Industrial Commission Wage Order No. 7, are unlawful and in violation of public
9 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
10 constitute unfair and unlawful business practices in violation of Business & Professions Code
11 §§ 17200 *et seq.*

12 157. Plaintiff and the Class are entitled to, and do, seek such relief as may be
13 necessary to restore to them the money and property which Defendants have acquired, or of
14 which Plaintiff and the Class have been deprived by means of the above-described unfair and
15 unlawful business practices.

16 158. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
17 above-described business practices are unfair and unlawful and that injunctive relief should be
18 issued restraining Defendants from engaging in any of the above described unfair and unlawful
19 business practices in the future.

20 159. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
21 redress the injuries which they have suffered as a consequence of the unfair and unlawful
22 business practices of Defendants. As a result of the unfair and unlawful business practices
23 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
24 harm unless Defendants are restrained from continuing to engage in these unfair and unlawful
25 business practices. In addition, Defendants should be required to disgorge the unpaid moneys
26 to Plaintiff and the Class.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendants, and each of them, as follows:

1. For compensatory damages in the amount of unpaid overtime due to Plaintiff and Class members, according to proof;
2. For compensatory damages in the amount minimum wages due to Plaintiff and Class members, according to proof;
3. For payment of unpaid wages in accordance with California labor and employment law;
4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal and/or rest period was not provided;
5. For payment to Plaintiff and Class members of waiting time penalties pursuant to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of termination or layoff, multiplied by the total amount of days elapsed between the date of the involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;
6. For an award of consequential damages in Plaintiff and Class members' favor and against Defendants, in an amount to be proven at trial;
7. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
8. For specific relief enforcing waiting time penalties of 30 days of per diem wages pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
9. For compensatory damages in the amount of Plaintiff and Class members' cell phone and tool use for business purposes, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);
10. For prejudgment interest accrued on all due and unpaid overtime and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;

1 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 226.8, 1198.5,
2 according to proof;

3 12. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order No. 7-
4 2001(14);

5 13. For reasonable costs, including attorneys' fees, in an amount according to proof
6 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 226.8, 2802 and/or Cal.
7 Code of Civ. Proc. §1021.5;

8 14. For an award of restitution of wages to Plaintiff and Class members in an
9 amount equal to the amount of wages owed and unpaid, according to proof;

10 15. For injunctive relief requiring Defendants to comply with Labor Code
11 1198.5(b)(1);

12 16. For injunctive relief ordering the continuing unfair business acts and practices to
13 cease, as the Court deems just and proper;

14 17. For other injunctive relief ordering Defendants to notify Plaintiff and Class
15 members that they have not been paid the proper amounts in accordance with California law;

16 18. For punitive and exemplary damages in a sum to be determined at trial; and

17 19. For such other and further relief as the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff Guadalupe Ochoa hereby respectfully requests a trial by jury for all claims and
20 issues raised in his Complaint that may be entitled to a jury trial.

21
22 LIPELES LAW GROUP, APC

23 Date: January 21, 2025

24
25 By: 

26 Thomas H. Schelly
27 Attorneys for Plaintiff
28 Guadalupe Ochoa