

Tuvia Korobkin (SBN 268066)
tuvia@marqueelaw.com
Nancy Goodes (SBN 346529)
nancy@marqueelaw.com
MARQUEE LAW GROUP, A Professional Corporation
9100 Wilshire Boulevard, Suite 445 East Tower
Beverly Hills, California 90212
(310) 275-1844 telephone
(310) 275-1801 fax

Attorneys for Plaintiff
JUSTIN BRAUN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JUSTIN BRAUN on behalf of himself and all
others similarly situated;

Plaintiff,

vs.

AV DECKING, INC. doing business in
California as AV METAL DECKING; and
DOES 1 through 100, inclusive;

Defendants.

Case No. 25STCV01069

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);**
- 2. FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- 3. REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- 4. WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- 5. UNLAWFUL WAGE DEDUCTIONS
(LABOR CODE §§ 221, *et seq.*, 2802);**
- 6. FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- 7. UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- 8. PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Justin Braun (“Plaintiff”), on behalf of himself and all others similarly situated,
2 and as a private attorney general on behalf of the State of California and other aggrieved
3 employees, hereby brings this Class Action Complaint against AV Decking, Inc. doing business
4 in California as AV Metal Decking and Does 1 through 100, inclusive (collectively,
5 “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, and as a private
8 attorney general on behalf of the State of California and other aggrieved employees, hereby brings
9 this class action for recovery of unpaid wages and penalties under California Business and
10 Professions Code section 17200, *et seq.*; Labor Code §§ 204, 221 *et seq.*, 226, 226.7, 510, 516,
11 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802, and 2804; and Industrial Welfare
12 Commission Wage Order No. 16 (“Wage Order 16”), in addition to seeking declaratory relief and
13 restitution. This class action is brought pursuant to California Code of Civil Procedure § 382.
14 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
15 amount in controversy exceeds this Court’s jurisdictional minimum.

16 **VENUE**

17 2. Venue is proper in this judicial district pursuant to California Code of Civil
18 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
19 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
20 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
21 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
25 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
26 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
27 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
28 by Labor Code §§ 204, 221 *et seq.*, 226, 226.7, 510, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,

2698 *et seq.*, 2802, 2804; Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 16, which sets employment standards for occupations in the construction, drilling, logging and mining industries.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a deck construction company, and that they employed Plaintiff and other similarly situated non-exempt employees within Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 22) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 22).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff has been employed by Defendants as a non-exempt laborer from in or about November 2024 to the present. Plaintiff's job entails travelling to various job sites and assisting with construction of decks for Defendants' clients. Plaintiff's commute to *some* worksites was reasonable, such as 30 minutes to 1 hour. Sometimes, however, and as discussed immediately below, Defendants would have Plaintiff travel to farther, more remote jobsites.

10. Defendants offer decking construction services throughout the Los Angeles, San Diego, San Bernardino, Riverside areas and other areas of California. During the relevant period, Plaintiff and other non-exempt employees were required by Defendants to travel to remote worksites, including instances wherein they would stay in a hotel for the duration of a work project. Plaintiff and other non-exempt employees were also sometimes required by Defendants to deliver tools from their home or another location to Defendants' worksite. However, Defendants failed to pay Plaintiff and other non-exempt employees for the hours traveling to remote construction sites as compulsory travel time or when delivering tools, resulting in unpaid minimum wages and overtime wages. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575.)

11. For example, in or about December 2024, Defendants required Plaintiff to travel in his personal vehicle from his home in Hesperia, California to a hotel in Chula Vista, California wherein he would stay to work at a job site in Chula Vista for multiple weeks. Along the way, Defendants also required Plaintiff to stop and pick up tools for the work site and deliver them to the Chula Vista worksite. Plaintiff spent approximately 4.5 hours or more traveling from his home to the hotel in Chula Vista. Though Plaintiff clocked in and out for the time he spent traveling, Defendants later deducted the entirety of Plaintiff's travel and delivery time from his time records. As a result, Plaintiff was paid for *none* of this compulsory travel time by Defendants, resulting in unpaid minimum wages and overtime wages. On information and belief, Defendants have otherwise deducted time from Plaintiff's and other non-exempt employees' time records, resulting in further unpaid wages, including minimum wages and overtime wages.

12. Further, Plaintiff and other non-exempt employees are not allowed to clock-in for work until they put on all required gear and tools and arrive "on-deck" to a specific section of the

1 worksite. Typically, it would take Plaintiff and other non-exempt employees approximately 10 to
2 20 minutes each day to put on their work gear after arriving at the employee parking lot. This
3 heavy gear could not be worn while driving. As such, employees had to don the gear *after* they
4 arrived at the employee parking lot. Then, Plaintiff and other non-exempt employees would have
5 to walk approximately .25 miles from the employee parking lot to the deck, which would take
6 about another 5 minutes. This time spent on the employer’s premises donning gear at the worksite
7 and then walking to the deck is compensable, as it requires the employees’ presence at a location
8 for an employment-related reason other than the necessity of reaching the worksite. (*Huerta v.*
9 *CSI Electrical Contractors* (2024) 15 Cal.5th 908, 924-925.) Yet as mentioned above, Plaintiff
10 and other non-exempt employees were not allowed to clock in until they were already in their
11 gear and “on deck.” As a result, Plaintiff and other non-exempt employees have suffered
12 approximately 15-25 minutes of unpaid minimum wage and/or overtime wages each day donning
13 their work gear and walking to the deck.

14 13. Defendants also failed to pay its employees at the proper overtime rate required
15 by Wage Order No. 16 at “one and one-half (1 1/2) times such employee’s *regular rate* of pay”
16 (emphasis added). Here, Plaintiff and other non-exempt employees were given a flat per-diem
17 payment for certain projects and were also paid “on-call” pay. However, Defendants failed to
18 incorporate these non-discretionary payments and/or higher hourly rates into employees’ “regular
19 rate” of pay and paid Plaintiff and other non-exempt employees an overtime rate of 1.5 times their
20 *base* rate of pay, without taking into account their “on-call” pay or per-diem payments. For
21 example, in the pay period of December 16-22, 2024, Plaintiff’s wage statement reflects that he
22 was paid \$120 in per diem payments (denoted as “SUB” on his wage statement) as well as \$46.30
23 for one hour of on-call time. Yet Plaintiff’s overtime wages for that pay period were paid at \$30
24 per hour, which was 1.5 times his *base* rate of \$20 per hour. As a result of this policy/practice,
25 Defendants have failed to pay Plaintiff and other non-exempt employees all overtime wages at
26 the proper overtime rate.

27 14. Defendants have also failed to authorize and permit compliant rest periods to
28 Plaintiff and other non-exempt employees. Specifically, Defendants have required Plaintiff and

1 other non-exempt employees to stay “on-deck” and work through their rest breaks. Despite failing
2 to authorize and permit legally compliant rest periods to Plaintiff and other non-exempt
3 employees, Defendants have failed to pay the rest period premiums required by Labor Code §
4 226.7. Upon information and belief, during at least a portion of the putative class period,
5 Defendants have maintained no payroll code or other mechanism for paying rest period premiums
6 when Defendants failed to authorize and permit a legally compliant rest period.

7 15. Defendants have also required Plaintiff and other employees to incur business
8 expenses without reimbursement. For example, Plaintiff and other employees were required to
9 use their personal cell phones for work purposes, including but not limited to downloading and
10 using an application called Workyard to clock in and out for work every day. Defendants have
11 also required Plaintiff and other employees to use their personal cell phones to communicate with
12 supervisors. Despite requiring Plaintiff and other employees to use their personal property for
13 work-related purposes, Defendants have failed to reimburse them for any portion of their personal
14 expenses, including any portion of their monthly cell phone bill. As a result of the foregoing,
15 Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and
16 *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding employer must
17 reimburse employees for “reasonable percentage” of their cell phone bills if they are required to
18 use their cell phones for work, even if employees did not incur specific out-of-pocket expense).

19 16. Plaintiff and other employees were also required to use their personal vehicles
20 when traveling to remote construction sites as compulsory travel time and when delivering tools,
21 as described above. These expenses were required to be reimbursed by Defendants under Labor
22 Code § 2802 as expenses the employees necessarily incurred in performing their employment
23 tasks. (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562, 567-568.) However,
24 Plaintiff and other employees were never provided with any reimbursement for the expenses they
25 incurred for their personal vehicle use from Defendants.

26 17. Plaintiff and other employees were also required by Defendants to use several
27 different tools to perform their construction job duties, including drills, saws, hammers, wrenches,
28 tape measures, and hammers. Plaintiff was required to supply many of his own tools, such as

1 drills, saws, and crowbars, as Defendants did not offer them. The cost of these tools exceeded
2 \$1,000. Despite requiring Plaintiff and other employees to supply these tools, Defendants failed
3 to reimburse them for *any* portion of the cost of their tools. And, Plaintiff and many other
4 employees do not earn two times the minimum wage, and therefore the exception under Wage
5 Order 16, § 8(B) does not apply to them.

6 18. The limited tools that Defendants *did* offer to Plaintiff and other employees for
7 their construction job duties, such as tool bags, tape measures, hammers, and harnesses, they
8 would only provide to them at a cost. Specifically, if Plaintiff or other employees required
9 Defendants' tools for work, Defendants would make deductions from employees' wages for the
10 costs of these tools. For example, Defendants deducted \$110.00 from Plaintiff's December 27,
11 2024 paycheck for "CTOOLS&EQUIP," which referred to a deduction to cover the cost of tools.
12 Such deductions are unlawful, as Defendants are required to provide necessary tools and cannot
13 pass on such costs to their employees.

14 19. As a result of Defendants' unlawful practices described above, Defendants have
15 maintained inaccurate time and payroll records, and have issued inaccurate wage statements to
16 Plaintiff and other non-exempt employees. Further, the wage statements issued by Defendants are
17 facially deficient as they fail to contain the address of the employer, in violation of Labor Code §
18 226(a)(8).

19 20. Plaintiff made several complaints about his pay, lack of compliant rest breaks,
20 unlawful deduction of wages, failure to reimburse him for tool expenses, and Defendants' general
21 failure to abide by California labor laws directly to the owner of Defendants, Anthony Velez
22 ("Velez"). In response, Velez said "F*ck California laws" (or words to that effect) and refused to
23 make any changes to Defendants' unlawful employment practices. Each time Plaintiff complained
24 to Defendants about their violations of California labor laws, Defendants responded with the same
25 hostility towards Plaintiff and failed to make any efforts towards compliance.

26 21. On information and belief, Defendants have engaged in the above unlawful
27 practices throughout the putative class period and continuing to the present.

28 ///

1 **CLASS ACTION ALLEGATIONS**

2 22. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
3 following Classes pursuant to California Code of Civil Procedure § 382:

4 a. The Minimum Wage Class consists of al of the Defendants' current and former
5 non-exempt employees in California who were subject to Defendants' timekeeping and
6 payroll practices, at any point from four years prior to the filing of this action to the present.

7 b. The Overtime Class consists of all of the Defendants' current and former non-
8 exempt employees in California who worked more than 8.0 hours in a workday and/or over
9 40.0 hours in a workweek, and were subject to Defendants' timekeeping and payroll
10 practices, at any time from four years immediately preceding the filing of this action
11 through the present.

12 c. The Rest Period Class consists of all of the Defendants' current and former non-
13 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
14 time from four years immediately preceding the filing of this action through the present.

15 d. The Wage Statement Class consists of (i) all members of the Minimum Wage
16 Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage
17 statement from Defendants, and (ii) all of Defendants' current and former California
18 employees who received a wage statement from Defendants that did not include
19 Defendants' address, at any time from one year immediately preceding the filing of this
20 action through the present.

21 e. The Unlawful Deductions Class consists of all of the Defendants' current and
22 former non-exempt employees in California from whom Defendants took unlawful
23 deductions, including but not limited to deductions for "CTOOLS&EQUIP," at any time
24 from four years immediately preceding the filing of this action through the present.

25 f. The Expense Reimbursement Class consists of all of Defendants' current and
26 former California employees who were required to use their personal property for work-
27 related purposes, including but not limited to personal cell phones, tools, and/or vehicles,
28 at any time from four years prior to the filing of this action through the present.

1 23. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
4 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
5 Defendants' employment records.

6 24. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
8 situated employees, which predominate over questions affecting only individual members
9 including, without limitation to:

- 10 i. Whether Defendants paid members of the Minimum Wage Class at least
11 the applicable minimum wage for all hours worked;
- 12 ii. Whether Defendants' timekeeping and payroll practices violate the
13 applicable Labor Code provisions including, but not limited to, §§ 510 and
14 1194 by requiring overtime work and not paying the Overtime Class for
15 said work according to California's overtime laws;
- 16 iii. Whether Defendants authorized and permitted legally compliant rest
17 periods to members of the Rest Period Class;
- 18 iv. Whether Defendants furnished legally compliant wage statements to
19 members of the Wage Statement Class pursuant to Labor Code § 226;
- 20 v. Whether Defendants unlawfully deducted wages from members of the
21 Unlawful Deductions Class;
- 22 vi. Whether Defendants properly reimbursed expenses incurred by members
23 of the Expense Reimbursement Class.

24 25. **Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual members of the Classes. The common
26 questions of law set forth above are numerous and substantial and stem from Defendants' policies
27 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
28 overtime, wage deduction, wage statement, rest period, and expense reimbursement

1 policies/practices. As such, the common questions predominate over individual questions
2 concerning each individual class member's showing as to his or her eligibility for recovery or as
3 to the amount of his or her damages.

4 26. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the
6 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
7 alleged herein, Plaintiff, like the members of the Classes, was not paid all earned minimum wages
8 and overtime wages; was subject to Defendants' uniform rest period policies/practices; was
9 furnished with inaccurate wage statements; suffered unlawful deductions of wages; and was not
10 reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

11 27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
12 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
13 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
14 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
15 actions in state and federal courts in the past and are committed to vigorously prosecuting this
16 action on behalf of the members of the Classes.

17 28. **Superiority:** The California Labor Code is broadly remedial in nature and serves
18 an important public interest in establishing minimum working conditions and standards in
19 California. These laws and labor standards protect the average working employee from
20 exploitation by employers who have the responsibility to follow the laws and who may seek to
21 take advantage of superior economic and bargaining power in setting onerous terms and
22 conditions of employment. The nature of this action and the format of laws available to Plaintiff
23 and members of the Classes make the class action format a particularly efficient and appropriate
24 procedure to redress the violations alleged herein. If each employee were required to file an
25 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
26 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
27 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
28 an individual remedy would discourage the assertion of lawful claims by employees who would

1 be disinclined to file an action against their former and/or current employer for real and justifiable
2 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
3 prosecution of separate actions by individual class members would create a substantial risk of
4 inconsistent or varying verdicts or adjudications with respect to the individual class members
5 against Defendants herein; and which would establish potentially incompatible standards of
6 conduct for Defendants. Further, the claims of the individual members of the Classes are not
7 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
8 costs and expenses attending thereto. As such, the Classes identified in Paragraph 22 are
9 maintainable under California Code of Civil Procedure § 382.

10 **FIRST CAUSE OF ACTION**

11 **MINIMUM WAGE VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 30. Wage Order 16 and Labor Code §§ 1197 and 1182.12 establish employees' right
15 to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
16 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
17 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
18 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

19 31. At all relevant times, Defendants failed to conform their pay practices to the
20 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
21 actually worked including, but not limited to, all hours they were subject to Defendants' control
22 and/or suffered or permitted to work under the Labor Code and Wage Order 16.

23 32. California Labor Code § 1198 makes unlawful the employment of an employee
24 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
25 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
26 those employees the balance of the unpaid wages as well as liquidated damages in an amount
27 equal to the wages due and interest thereon.

28 ///

1 33. As a direct and proximate result of Defendants’ unlawful conduct as alleged
2 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
3 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
4 entitled to recover economic and statutory damages and penalties and other appropriate relief as
5 a result of Defendants’ violations of the California Labor Code and applicable Wage Orders.

6 34. Defendants’ practice and uniform administration of corporate policy regarding
7 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff
8 and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
9 liquidated damages, interest, statutory penalties, and attorneys’ fees and costs of suit, per Labor
10 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PAY OVERTIME WAGES**
13 **(AGAINST ALL DEFENDANTS)**

14 35. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

15 36. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
16 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
17 overtime hours worked, and which provide a private right of action for the failure to pay all
18 overtime compensation for overtime work performed.

19 37. At all relevant times, Defendants were required to properly compensate Plaintiff
20 and Overtime Class members for all overtime hours worked pursuant to Labor Code §§ 510 and
21 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee “one and
22 one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per workday
23 and/or in excess of 40 hours in a workweek, and for the first 8 hours on the seventh consecutive
24 workday in a workweek. Wage Order 16, § 3 also requires an employer to pay an employee double
25 the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess
26 of 8 hours on the seventh consecutive workday in a workweek. As alleged herein, Defendants
27 caused Plaintiff and Overtime Class members to work overtime and double-time hours but did
28 not compensate them at one and one-half times (or two times) their regular rate of pay.

38. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Labor Code §§ 226.7 and 516, and Wage Order 16 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

41. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each workday they were not authorized and permitted all rest periods to which they were entitled.

42. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that

1 included, among other requirements, the address of the employer, all hours worked, all hours
2 worked at each rate of pay, and all wages earned, in violation of Labor Code § 226(a).

3 45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
4 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
5 among other things, the non-payment of all their wages and meal and rest period premium wages,
6 the failure to advise employees of the employer's address, and deprived them of the information
7 necessary to identify and reconcile the discrepancies in Defendants' reported data.

8 46. Defendants' failures create an entitlement to recovery by Plaintiff and members of
9 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
10 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
11 of suit, pursuant to Labor Code §§ 226 and 226.3.

12 **FIFTH CAUSE OF ACTION**

13 **UNLAWFUL DEDUCTION OF WAGES**

14 **(AGAINST ALL DEFENDANTS)**

15 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 48. Under California law, an employer may not take deductions from an employee's
17 earned wages, except in certain limited circumstances not relevant here. (Lab. Code §§ 221, 224.)

18 49. Deductions from wages made for business expenses are unlawful, as an employee
19 is entitled to be reimbursed or indemnified by his or her employer for expenses or losses incurred
20 in direct consequence of the discharge of the employee's work duties. (Lab. Code § 2802.)

21 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knowingly and intentionally, as a matter of uniform policy and practice, made unlawful
23 deductions of wages to Plaintiff and the Unlawful Deductions Class wherein they deducted wages
24 from employees for the cost of the tools provided by Defendants which were used in direct
25 consequence of the discharge of the employees' work duties, in violation of Labor Code §§ 221
26 *et seq.* and 2802.

27 51. Through Defendants' conduct during the applicable statutory period, Defendants
28 violated Labor Code section 221 by illegally deducting these wages. As a result of Defendants'

1 improper deduction of wages, Plaintiff and members of the Unlawful Deductions Class did not
2 receive all wages due.

3 52. Defendants' unlawful deductions of wages create an entitlement to recovery by
4 Plaintiff and members of the Unlawful Deduction of Wages Class in a civil action for all damages
5 and interest thereon, civil penalties, and attorneys' fees and costs, pursuant to Labor Code §§
6 218.5, 218.6, and 225.5.

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

9 **(AGAINST ALL DEFENDANTS)**

10 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 54. At all relevant times, Defendants were subject to Labor Code § 2802, which states
12 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
13 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
14 her obedience to the directions of the employer."

15 55. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
16 "any contract or agreement, express or implied, made by any employee to waive the benefits of
17 this article or any part thereof, is null and void, and this article shall not deprive any employee or
18 his personal representative of any right or remedy to which he is entitled under the laws of this
19 State."

20 56. Due to Defendants' unlawful policy and practice of requiring employees to use
21 their personal property, including but not limited to personal cell phones, personal vehicles, and/or
22 personal tools, for work purposes and their failure to reimburse Plaintiff and members of the
23 Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

24 57. As a proximate result of Defendants' policies and/or practices in violation of Labor
25 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have
26 suffered damages in sums, which will be shown according to proof.

27 58. Plaintiff and members of the Expense Reimbursement Class are entitled to
28 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

59. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

61. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum wages and overtime wages due, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, unlawfully deducting wages, and failing to reimburse business expenses.

62. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

63. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

64. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

65. Plaintiff was compelled to retain the services of counsel to file this court action to protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
2 which he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **EIGHTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(AGAINST ALL DEFENDANTS)**

6 66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 67. Defendants have committed several Labor Code violations against Plaintiff and
8 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
9 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself, the State of California, and other
10 aggrieved employees, brings this representative action against Defendants to recover the civil
11 penalties due to Plaintiff, other aggrieved employees, and the State of California according to
12 proof, as well as for injunctive relief, as provided under the Private Attorneys General Act, based
13 on the following violations:

- 14 a. Failing to pay Plaintiff and other aggrieved employees at least the applicable
15 minimum wage for all hours worked, in violation of Labor Code §§ 204,
16 1182.12, 1194, 1194.2, 1197, and 1198;
- 17 b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or
18 double-time compensation earned, in violation of Labor Code §§ 204, 510, 558,
19 1194, and 1198;
- 20 c. Failing to authorize and permit all required rest periods, and failing to pay rest
21 period premium wages, to Plaintiff and other aggrieved employees, in violation
22 of Labor Code §§ 226.7, 516, 558, and 1198;
- 23 d. Failing to reimburse Plaintiff and other aggrieved employees for all work-
24 related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- 25 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
26 complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- 27 f. Taking unlawful deductions from Plaintiff's and other aggrieved employees'
28 wages, in violation of Labor Code § 221 *et seq.*, and 1198;

1 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
2 226, *et seq.*;

3 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 221-224, 225.5, and 2802;

5 9. Upon the Sixth Cause of Action, for compensatory, consequential, general, and
6 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

7 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;

10 11. Upon the Eighth Cause of Action, for any and all civil penalties available to Plaintiff,
11 the State of California, and other aggrieved employees under the Private Attorneys General Act,
12 as well as injunctive relief under the Private Attorneys General Act prohibiting Defendants from
13 engaging in the unlawful conduct alleged herein;

14 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 Cal. Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
16 California Constitution;

17 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 218.5, 226(e), 1194 *et seq.*, 2699(k), 2802(c), Code of Civil Procedure § 1021.5, and all other
19 applicable statutes; and

20 14. For such other and further relief the Court may deem just and proper.

21
22 Date: March 25, 2025

MARQUEE LAW GROUP, APC

23
24 

25 Tuvia Korobkin
26 Attorneys for Plaintiff

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Date: March 25, 2025



20

First Amended Class and Representative Action Complaint