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Executive Officer/Clerk of Court,
By M. Aguirre, Deputy Clerk

5 Attorneys for Plaintiff
6 Jesse Johnson
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 JESSE JOHNSON, individually, and
12 on behalf of all others similarly
situated,

13 Plaintiff,

14 v.

15 MAJCO LLC, dba BIG BRAND
16 TIRE & SERVICE; and DOES 1 to
10, inclusive,

17 Defendants.
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Case No. **25STCV10825**

CLASS ACTION COMPLAINT

1. Failure to Pay Overtime
2. Failure to Pay Minimum Wage
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Improper Wage Statements
6. Waiting Time Penalties
7. Failure to Pay Business Expenses
8. Improper Deductions from Wages
9. Unfair Competition
10. PAGA Action
11. Failure to Maintain Records
12. Failure to Provide Records
13. Wrongful Termination (Statutory)
14. Wrongful Termination (CL)
15. Common Law Claim for Retaliation
16. Misclassification

Demand for Jury Trial

1 Plaintiff Jesse Johnson (hereinafter, “Plaintiff”), as an individual and all other
2 similarly situated, by and through his undersigned attorneys, alleges as follows:

3 **INTRODUCTION:**

4 1. Majco, LLC (“MAJCO”) does business as Big Brand Tire & Service, according
5 to its website.¹

6 2. MAJCO has employed a workforce of over 100 non-exempt hourly workers
7 during the Class Period who perform manual labor duties, including but not limited tire
8 repairs, replacement leak detection and preventative maintenance.

9 3. MAJCO has company-wide policies and procedures that control virtually every
10 facet of the plumber’s jobs, including the uniforms they wear, the materials they use, and
11 the jobs they perform, including when and where they perform them.

12 4. Plaintiff was employed as non-exempt hourly worker for MAJCO. Plaintiff is
13 bringing this suit to recover damages against MAJCO due to their illegal employment
14 practices as more fully described herein. Plaintiff is bringing this suit on behalf of himself
15 and a class of MAJCO hourly workers in California during the period four years prior to the
16 filing of this Complaint and ending on such date as may be determined by the Court (the
17 “Class Period”).

18 **JURISDICTION AND VENUE**

19 5. This is a civil action seeking unpaid wages, continuing wages, damages, and
20 attorneys’ fees and costs, including such reasonable reimbursement of fees and costs as
21 may be required by Section 218.5 of the California Labor Code. MAJCO does not
22 provide proper meal breaks to the Class Members. Instead, Class Members are required to
23 eat lunch on the run, while a half hour of work is deducted from their paychecks. Class
24 Members do not receive meal penalties as required.² So-called “Managers” receive a
25 salary, but are misclassified because they are required to go to job sites to perform manual
26

27 ¹ <https://www.bigbrandtire.com/>.

28 ² Failure by defendant to pay any meal penalties is a certifiable issue because no company can have perfect compliance. Safeway v. Sup. Ct. (Esparza), 238 Cal. App. 4th 1138 (2015).

1 labor. Employees are retaliated against for reporting labor and safety violations.

2 6. Venue as Defendants is proper in this judicial district, pursuant to California
3 Code of Civil Procedure section 395. Defendants maintain an office, transact business,
4 have an agent or are otherwise found in the County of Los Angeles and are within the
5 jurisdiction of this court for the purpose of service of process. The unlawful acts alleged
6 herein had a direct effect on and were committed within the State of California.

7 7. This Court has jurisdiction over Defendants because, upon information and
8 belief, each Defendant is either a resident of California, has minimum contacts in
9 California, or otherwise intentionally avails itself of the protections of California so as to
10 render California's exercise of jurisdiction over Defendants consistent with traditional
11 notions of fair play and substantial justice.

12 PARTIES

13 8. Plaintiff is an individual. At all times relevant hereto, Plaintiff worked in Los
14 Angeles County as a non-exempt employee. Plaintiff was employed by MAJCO during
15 the Class Period.

16 9. Defendant MAJCO is a California corporation and at all times relevant
17 hereto, MAJCO conducted substantial and regular business throughout California.
18 MAJCO's business is plumbing, drain, sewer, gas service, repair and installation
19 throughout Los Angeles County.

20 10. Defendant was an owner/operator of MAJCO during the relevant time period.
21 Each individual Defendant was personally involved in and/or responsible for decisions
22 regarding operations and compensation policy for MAJCO. Each individual Defendant
23 was personally informed of the unsafe conditions which are the subject of the wrongful
24 termination and retaliation allegations herein.

25 11. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown
27 to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil
28

1 Procedure § 474. Plaintiff is informed and believe, and based thereon allege, that each of
2 the Defendants designated herein as a DOE is legally responsible in some manner for the
3 unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint
4 to reflect the true names and capacities of the Defendants designated hereinafter as DOES
5 when such identities become known.

6 12. Plaintiff is informed and believe, and based thereon allege, that each
7 Defendant acted in all respects pertinent to this action as the agent of the other
8 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
9 hereto, and the acts of each Defendant are legally attributable to the other Defendants.
10 The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on
11 behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or
12 more provisions of the California Labor Code as alleged herein.

13 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

14 13. MAJCO provides tire repair and installation throughout Los Angeles County
15 and other parts of California. While MAJCO has stores in Arizona, Colorado and Nevada,
16 this lawsuit only addresses alleged violations in California. MAJCO's hourly workers,
17 including Plaintiff and the members of the class that Plaintiff seeks to represent, primarily
18 perform manual labor associated with tire repair and replacement services at times and
19 locations specified by MAJCO. These services include tire inspection, replacement,
20 detecting leaks, and troubleshooting and repairing the customer tires.

21 14. Plaintiff was a non-exempt employee within the meaning of the California
22 Labor Code and the implementing rules and regulations of the IWC Wage Orders, and, in
23 particular, Industrial Welfare Commission Wage Order 7-2001 and California Labor
24 Code §515. Plaintiff's primary job duties – including the tasks described in the preceding
25 paragraph – involved tasks that were performed pursuant to an established protocol. The
26 job duties involved a variety of physical demands, including standing, bending, lifting,
27 drilling, and moving equipment. This type of work is non-exempt work.
28

1 15. In order to meet the requirements of their job duties, hourly workers typically
2 work more than 40 hours per week and more than eight hours per day, and sometimes
3 have to work seven days per week at the direction of MAJCO . Hourly workers are also
4 not provided meal and rest periods as required by the California Labor Code.

5 16. MAJCO pays compensation to the hourly workers incorrectly. Contrary to
6 federal and California law, including the provisions of Section 510 of the California Labor
7 Code, MAJCO does not keep proper time records and does not pay proper overtime.

8 17. Plaintiff is informed and believed and thereon allege that MAJCO
9 implemented a system to pay its employees an hourly rate plus commissions. However,
10 MAJCO often failed to properly pay commissions and MAJCO failed to utilize the
11 commissions to paid to employees in order to compute overtime. Defendant paid
12 commissions as bonuses i.e. “money promised to an employee in addition to the monthly
13 salary, hourly wage, commission or piece rate usually due as compensation”. Division of
14 Labor Standards Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5.
15 Bonuses are in addition to any other remuneration rate and may be predicated on
16 performance over and above that which is paid for hours worked, pieces made, or sales
17 completed. Id. A bonus may be in the form of a gratuity where there is no promise for
18 their payment, for example, a holiday bonus at the end of the year. Additionally, a bonus
19 may be a contractually required payment where a promise is made that a bonus will be paid
20 in return for a specific result, such as exceeding a minimum sales figure or piece quota, or
21 as an inducement to remain in the employ of the employer for a certain period of time.³
22 Defendant failed to utilize the commissions in computation of overtime for Aggrieved
23 Employees. Further, Defendant failed to pay the hourly wages due when commission
24

25 ³ The word has been defined as: “An addition to salary or wages normally paid for extraordinary
26 work. An inducement to employees to procure efficient and faithful service.” Duffy Bros. v. Bing &
27 Bing, 217 App.Div.10, 215 N.Y.S. 755, 758 (1939). Bonuses may be in the form of a gratuity where
28 there is no promise for their payment; or they may be a contractually required payment where a promise
is made that a bonus will be paid in return for a specific result (i.e., exceeding a minimum sales or piece
quota). (See detailed discussion of Bonuses at Section 35 of this Manual). Division of Labor Standards
Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Sums earned as bonuses
are wages under the definition found in California Labor Code §200.

1 payments exceeded the hourly wages.

2 18. When Plaintiff became aware of the unpaid wages and questioned
3 representatives of MAJCO regarding the wages that were withheld, MAJCO repeatedly
4 refused to pay the outstanding wages and terminated Plaintiff.

5 19. In performing their job duties, MAJCO required hourly workers to use safety
6 equipment and other tools. Hourly workers had to purchase and maintain some safety
7 equipment, cell phones and tools with their own money, and they were not reimbursed by
8 MAJCO .

9 20. MAJCO has not provided proper mileage or other expense reimbursement for
10 auto use.

11 21. MAJCO failed to comply with the California Labor Code and Wage Order 7-
12 2001(6) by failing to maintain time records showing when Plaintiff began and ended each
13 work and meal break period, and total daily hours worked. Defendants also failed to
14 provide Plaintiff with itemized wage statements that reflect all deductions from payment
15 of wages, as well as required meal penalties.

16 22. At all relevant times mentioned herein, section 201 of the California Labor
17 Code provided that “wages earned and unpaid at the time of discharge are due and payable
18 immediately.” Cal. Lab. Code § 201. Similarly, section 202 of the California Labor Code
19 provided:

20 If an employee not having a written contract for a definite period quits his or
21 him employment, his or him wages shall become due and payable not later
22 than 72 hours thereafter, unless the employee has given 72 hours previous
23 notice of his or him intention to quit, in which case the employee is entitled
to his or him wages at the time of quitting.

24 Id. § 202(a).

25 23. Defendants did not compensate Plaintiff and the Class Members as required
26 by sections 201 and/or 202 of the California Labor Code, as the “final” paycheck Plaintiff
27 received did not fully compensate Plaintiff, as Defendants failed to pay overtime to
28 Plaintiff for hours worked in excess of eight per day.

1 24. Furthermore, at all relevant times mentioned herein, section 203 of the
2 California Labor Code provided:

3 If an employer willfully fails to pay, without abatement or reduction, in
4 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
5 employee who is discharged or who quits, the wages of the employee shall
6 continue as a penalty from the due date thereof at the same rate until paid or
7 until action therefor is commenced; but the wages shall not continue for more
8 than 30 days.

9 Id. § 203.

10 25. Plaintiff contends that Defendants failure to pay him and the Class Members
11 within the time provided by sections 201 and/or 202 of the California Labor Code has
12 been and is “willful” within the meaning of section 203 of the California Labor Code and
13 that, accordingly, Plaintiffs are entitled to the “continuing wages” provided for by section
14 203.

15 26. Defendants also violated section 204 of the California Labor Code by failing to
16 regularly pay all wages earned to those of its workers who had not quit or been fired.

17 27. At all relevant times mentioned herein, section 1198 of the California Labor
18 Code provided:

19 The maximum hours of work and the standard conditions of labor fixed by
20 the [Industrial Welfare Commission] shall be the maximum hours of work
21 and the standard conditions of labor for employees. The employment of any
22 employee for longer hours than those fixed by [an] order or under conditions
23 of labor prohibited by [an] order is unlawful.

24 Cal. Lab. Code § 1198.

25 28. At all relevant times mentioned herein, Wage Order Number 16 (as
26 periodically amended) applied to Plaintiff and the Class Members.

27 29. Wage Order Number 16 requires a one-hour wage premium for each day
28 that an employee is not provided with a mandated ten-minute rest period per four-hour
work period. Additionally, Wage Order Number 16 requires a one-hour wage premium

1 for each day that an employee is not provided with a mandated thirty-minute meal period
2 for any shift that is longer than five hours. Finally, Wage Order Number 16 requires that
3 those who are employed more than eight hours in any workday or more than forty hours in
4 any workweek receive overtime compensation.

5 30. The right to rest periods and meal periods has been codified in sections
6 226.7 and 512 of the California Labor Code. At all relevant times mentioned herein,
7 section 512 provided:

8 An employer may not employ an employee for a work period of more than five
9 hours per day without providing the employee with a meal period of not less than 30
10 minutes, except that if the total work period per day of the employee is no more than six
11 hours, the meal period may be waived by mutual consent of both the employer and
12 employee. An employer may not employ an employee for a work period of more than 10
13 hours per day without providing the employee with a second meal period of not less than
14 30 minutes, except that if the total hours worked is no more than 12 hours, the second
15 meal period may be waived by mutual consent of the employer and the employee only if
16 the first meal period was not waived.

17 Cal. Lab. Code § 512(a).

18 31. At all relevant times mentioned herein, section 226.7 provided:

19 If an employer fails to provide an employee a meal period or rest period in
20 accordance with an applicable order of the Industrial Welfare Commission,
21 the employer shall pay the employee one additional hour of pay at the
22 employee's regular rate of compensation for each work day that the meal or
rest period is not provided.

23 Cal. Lab. Code § 226.7(b).

24 32. During their employment with Defendants, Plaintiff and the Class Members
25 were not provided ten-minute rest breaks and thirty-minute meal breaks. Neither Plaintiff
26 nor the Class Members were provided the required rest and meal breaks.

27 33. Compensation for missed rest and meal breaks constitutes wages within the
28 meaning of section 201 of the California Labor Code.

1 34. At all relevant times herein, section 226 of the Labor Code provided:

2 (a) Every employer shall, semimonthly or at the time of each payment of
3 wages, furnish each of his or her employees, either as a detachable part of
4 the check, draft, or voucher paying the employee's wages, or separately when
5 wages are paid by personal check or cash, an itemized statement in writing
6 showing (1) gross wages earned, (2) total hours worked by the employee,
7 except for any employee whose compensation is solely based on a salary and
8 who is exempt from payment of overtime under subdivision (a) of Section
9 515 or any applicable order of the Industrial Welfare Commission, (3) the
10 number of piece-rate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate basis, (4) all deductions, provided, that all
12 deductions made on written orders of the employee may be aggregated and
13 shown as one item, (5) net wages earned, (6) the inclusive dates of the period
14 for which the employee is paid, (7) the name of the employee
15 and his or her social security number, except that by January 1, 2008, only
16 the last four digits of his or her social security number or an employee
17 identification number other than a social security number may be shown on
18 the itemized statement, (8) the name and address of the legal entity that is the
19 employer, and (9) all applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the
21 employee. The deductions made from payments of wages shall be recorded
22 in ink or other indelible form, properly dated, showing the month, day, and
23 year, and a copy of the statement or a record of the deductions shall be kept
24 on file by the employer for at least three years at the place of employment or
25 at a central location within the State of California.

26

27 (e) An employee suffering injury as a result of a knowing and intentional
28 failure by an employer to comply with subdivision (a) is entitled to recover
the greater of all actual damages or fifty dollars (\$50) for the initial pay
period in which a violation occurs and one hundred dollars (\$100) per
employee for each violation in a subsequent pay period, not exceeding an
aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

29

30 (h) An employee may also bring an action for injunctive relief to ensure
31 compliance with this section, and is entitled to an award of costs and
32 reasonable attorney's fees.

33 Id. § 226.

34 35. Defendants employed Plaintiff and the Class Members but failed to provide
35 them with the data required by section 226 of the California Labor Code.

36 36. At all relevant times mentioned herein, section 204(a) of the California Labor

1 Code provided:

2 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,
3 earned by any person in any employment are due and payable twice during
4 each calendar month, on days designated in advance by the employer as the
5 regular paydays. Labor performed between the 1st and 15th days, inclusive,
6 of any calendar month shall be paid for between the 16th and the 26th day of
7 the month during which the labor was performed, and labor performed
8 between the 16th and the last day, inclusive, of any calendar month, shall be
9 paid for between the 1st and 10th day of the following month.

10 Id. § 204(a).

11 37. At all relevant times mentioned herein, section 510 of the California Labor

12 Code provided:

13 Eight hours of labor constitutes a day's work. Any work in excess of eight
14 hours in one workday and any work in excess of 40 hours in any one
15 workweek and the first eight hours worked on the seventh day of work in any
16 one workweek shall be compensated at the rate of at least one and one-half
17 times the regular rate of pay for an employee. Any work in excess of 12
18 hours in one day shall be compensated at the rate of no less than twice the
19 regular rate of pay for an employee. In addition, any work in excess of eight
20 hours on any seventh day of a workweek shall be compensated at the rate of
21 no less than twice the regular rate of pay of an employee. Nothing in this
22 section requires an employer to combine more than one rate of overtime
23 compensation in order to calculate the amount to be paid to an employee for
24 any hour of overtime work. The requirements of this section do not apply to
25 the payment of overtime compensation to an employee working pursuant to
26 any of the following: (1) An alternative workweek schedule adopted
27 pursuant to Section 511. (2) An alternative workweek schedule adopted
28 pursuant to a collective bargaining agreement pursuant to Section 514.

29 Id. § 510(a).

30 38. In regard to the employment of Plaintiff and the Class , the provisions of
31 subparagraphs (1) and (2) of section 510 of the California Labor Code were inapplicable
32 in that no alternative workweek schedule had been adopted pursuant to section 511 and
33 Plaintiff's employment was not governed by any collective bargaining agreement.
34 Similarly members of the Class were not members of any union nor was their work for
35 MAJCO governed by any collective bargaining agreement.

39. At all relevant times mentioned herein, section 1194 of the California Labor Code provided:

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

Id. § 1194. At all relevant times mentioned herein, section 1194.2 of the California Labor Code provided that, "[I]n any action under . . . Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Id. § 1194.2.

Section 1197.1 (a) of the California Labor Code provides:

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Cal. Lab. Code § 1197.1.

40. IWC Wage Order 7, provides, in part:

2. DEFINITIONS

(D) —"Employ" means to engage, suffer, or permit to work.

(E) —"Employee" means any person employed by an employer.

(F) —"Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

...

3. HOURS AND DAYS OF WORK

1 (A) Daily Overtime- General Provisions

2 (1) The following overtime provisions are applicable to employees 18 years
3 of age or over and to employees 16 or 17 years of age who are not required
4 by law to attend school and are not otherwise prohibited by law from
5 engaging in the subject work. Such employees shall not be employed more
6 than eight (8) hours in any workday or more than 40 hours in any workweek
7 unless the employee receives one and one-half (1 1/2) times such employee's
8 regular rate of pay for all hours worked over 40 hours in the workweek. Eight
9 (8) hours of labor constitutes a day's work. Employment beyond eight (8)
10 hours in any workday or more than six (6) days in any workweek is
11 permissible provided the employee is compensated for such overtime as
12 follows:

13 (a) Employees may be employed up to a maximum of 16 hours including
14 meal periods in any one day from the time they are required and do report
15 until dismissed, provided the employee is compensated for such overtime at
16 not less than:

17 (i) For daily employees and weekly employees, excluding weekly employees
18 guaranteed more than 40 hours a workweek and —on call employees, one
19 and one-half (1 1/2) times the employee's regular rate of pay for all hours
20 worked in excess of eight (8) hours up to and including 12 hours in any one
21 workday, and for the first eight (8) hours worked on the seventh (7th)
22 consecutive day of work in a workweek; and

23 (ii) Double the employee's regular rate of pay for all hours worked in excess
24 of 12 hours in any workday, and for all hours worked in excess of eight (8)
25 hours on the seventh (7th) consecutive day of work in a workweek.

26 . . .

27 (iv) The overtime rate of compensation required to be paid to a nonexempt
28 full-time salaried employee shall be computed by using the employee's
regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

29 . . .

30 **4. MINIMUM WAGES**

31 (A) Every employer shall pay to each employee wages not less than nine
32 dollars (\$13.00) per hour for all hours worked, effective January 1, 2021. . . .

33 **7. RECORDS**

34 (A) Every employer shall keep accurate information with respect to each
35 employee including the following:

36 (1) Full name, home address, occupation and social security number.

37 (2) Birth date, if under 18 years, and designation as a minor.

38 (3) Time records showing when the employee begins and ends each work
period. Meal periods, split shift intervals and total daily hours worked shall

also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

...

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than 30 minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period.

(B) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an on-duty meal period and counted as time worked. An on-duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(D) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

...

20. PENALTIES

(See Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

IWC Wage Order 7.

41. At all relevant times mentioned herein, section 558 of the California Labor Code provided:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

1 employee was underpaid in addition to an amount sufficient to recover
2 underpaid wages. (3) Wages recovered pursuant to this section shall be paid
3 to the affected employee.

4 Cal. Lab. Code § 558.

5 42. At all relevant times herein, California Labor Code section 2802
6 provided, in relevant part:

7 (a) An employer shall indemnify his or her employee for all necessary
8 expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or duties

10 (b) All awards made by a court . . . for reimbursement of necessary
11 expenditures under this section shall carry interest at the same rate as
12 judgments in civil actions. Interest shall accrue from the date on which the
13 employee incurred the necessary expenditure or loss.

14 (c) For purposes of this section, the term “necessary expenditures or losses”
15 shall include all reasonable costs, including, but not limited to, attorney’s fees
16 incurred by the employee enforcing rights granted by this section.

17 Cal. Lab. Code § 2802.

18 43. At all relevant times herein, California Labor Code section 221 provided:

19 It shall be unlawful for any employer to collect or receive from an employee
20 any part of wages theretofore paid by said employer to said employee.

21 Cal. Lab. Code § 221. “[Labor Code] section 221 has long been held to prohibit
22 deductions from an employee’s wages for cash shortages, breakage, loss of equipment,
23 and other business losses that may result from the employee’s simple negligence.”

24 Hudgins v. Neiman Marcus Group, Inc., 34 Cal.App.4th 1109, 1118 (1995). An employer
25 can lawfully withhold amounts from an employee’s wages only: (1) when required or
26 empowered to do so by state or federal law, or (2) when a deduction is expressly
27 authorized in writing by the employee to cover insurance premiums, benefit plan
28 contributions or other deductions not amounting to a rebate on the employee’s wages, or
(3) when a deduction to cover health, welfare, or pension contributions is expressly
authorized by a wage or collective bargaining agreement. Labor Code Sections 221 and
224.

44. Notwithstanding the foregoing requirements of law, Plaintiff and the Class

1 Members were not timely paid the minimum wages and/or overtime to which they were
2 entitled. Plaintiff and the Class Members were denied reimbursement, meal breaks, rest
3 breaks and payment of overtime wages although they often worked in excess of eight
4 hours per day and forty hours per week.

5 45. At all relevant times mentioned herein, section 226.8 of the Code provided in
6 pertinent part:

7 (a) It is unlawful for any person or employer to engage in any of the
8 following activities:

9 (1) Willful misclassification of an individual as an independent
10 contractor.

11 (2) Charging an individual who has been willfully misclassified as an
12 independent contractor a fee, or making any deductions from compensation,
13 for any purpose, including for goods, materials, space rental, services,
14 government licenses, repairs, equipment maintenance, or fines arising from
15 the individual's employment where any of the acts described in this paragraph
16 would have violated the law if the individual had not been misclassified.

17 (b) If the Labor and Workforce Development Agency or a court issues
18 a determination that a person or employer has engaged in any of the
19 enumerated violations of subdivision (a), the person or employer shall be
20 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
21 not more than fifteen thousand dollars (\$15,000) for each violation, in
22 addition to any other penalties or fines permitted by law.

23 (c) If the Labor and Workforce Development Agency or a court issues
24 a determination that a person or employer has engaged in any of the
25 enumerated violations of subdivision (a) and the person or employer has
26 engaged in or is engaging in a pattern or practice of these violations, the
27 person or employer shall be subject to a civil penalty of not less than ten
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1 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
2 (\$25,000) for each violation, in addition to any other penalties or fines
3 permitted by law.

4 Code § 226.8. Defendants violated Code § 226.8 by willfully misclassifying many of its
5 employees, past and present, including Plaintiff and Aggrieved Employees, as
6 independent contractors.

7 46. Defendants have engaged in a pattern and practice of misclassifying their
8 employees as independent contractors to avoid taxes, insurance and other costs that
9 accompany employee status. Section 2753 of the Code provides:

10 (a) A person who, for money or other valuable consideration, knowingly
11 advises an employer to treat an individual as an independent contractor to
12 avoid employee status for that individual shall be jointly and severally
13 liable with the employer if the individual is found not to be an
14 independent contractor.

15 47. All of the foregoing was intentional misconduct of Defendants that
16 injured Plaintiff and putative Class Members insofar as they were subjected to
17 confusion and deprived of information to which they were legally entitled.

18 **CLASS ACTION ALLEGATIONS**

19 48. Plaintiff brings this action on behalf of himself and all others similarly
20 situated pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a
21 Class which is defined as: all persons who were paid wages for work performed for
22 MAJCO in California during the period four years prior to the filing of this Complaint and
23 ending on such date as may be determined by the Court (the "Class Period").

24 49. The Class includes all persons who performed work for MAJCO, even if they
25 were paid hourly, by commission, salary, piece rate, or any combination thereof.

26 50. Plaintiff reserves the right under Rule 3.765 of the California Rules of Court to
27 amend or modify the class descriptions with greater specificity or to further divide the class
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1 into subclasses.

2 51. This action is properly brought as a class action pursuant to Code of Civil
3 Procedure 382 because there is a well-defined community of interest in the litigation and
4 the proposed Class is easily ascertainable.

5 52. **Numerosity:** The potential members of the Class are so numerous that joinder
6 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
7 relevant time periods MAJCO employed more than 100 hourly workers. Nevertheless the
8 Class does not consist of so many individuals as to make this case unmanageable.

9 53. **Commonality:** There are questions of law and fact common to the Class that
10 predominate over any questions affecting only individual Class members. Common
11 questions include, but at not limited to: (a) whether MAJCO provided proper wage
12 statements to its workers; (b) whether MAJCO failed to pay Class members proper
13 overtime compensation; (c) whether MAJCO failed to provide meal and rest periods (d)
14 whether MAJCO reimbursed class members for expenses and mileage; (e) whether MAJCO
15 provided accurate itemized wage statements; and (f) whether MAJCO acted intentionally
16 when classifying the “installment managers” as independent contractors. Moreover, there
17 are very few questions of law or fact that are not common to the class.

18 54. **Typicality:** The claims of Plaintiff are typical of the claims of the Class.

19 55. **Adequacy of representation:** Plaintiff will fairly and adequately represent and
20 protect the interests of the members of the Class. Counsel for Plaintiff are competent and
21 experienced in litigating employment class action cases.

22 56. **Superiority of Class Action:** A class action is superior to other available
23 means for the fair and efficient adjudication of this controversy. The unlawful conduct
24 described in this complaint are based on MAJCO’s company-wide policies regarding its
25 treatment of hourly workers. Moreover, class action treatment will allow people similarly
26 situated as Plaintiff to litigate their claims in the manner that is most efficient and
27 economical for all parties and for the judicial system.
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FIRST CAUSE OF ACTION

(Failure To Pay Overtime California Labor Code §§ 510 and 1194; Wage Order 7)

(By Plaintiff individually and on behalf of the Class against all Defendants)

57. Plaintiff realleges and incorporates herein by reference the allegation contained in this Complaint as though fully set forth herein.

58. Defendants failed to pay Plaintiff and the members of the Class for all hours worked. Plaintiff and the members of the Class worked more than 40 hours per week and/or more than 8 hours per day, but they did not receive compensation for this time at their regularly hourly rate or did they receive overtime compensation.

59. As a result of MAJCO's failure to pay overtime, MAJCO willfully violated the provisions of Labor Code §§ 510 and 1194.

60. Plaintiff and Class members have been deprived of wages in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties.

SECOND CAUSE OF ACTION

(Failure To Pay Minimum Wage)

(By Plaintiff individually and on behalf of the Class against all Defendants)

61. Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

62. Under both state and federal law, employees may not agree to waive their entitlement to the minimum wage. Moreover, contrary to the federal averaging method, California workers must receive the minimum wage for each hour worked during the payroll period.

63. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the Class were not compensated in an amount greater than or equal to the minimum wage while employed as hourly workers by defendant.

64. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial.

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THIRD CAUSE OF ACTION

(Failure To Provide Meal Periods Labor Code §226.7)

(By Plaintiff individually and on behalf of the Class and against all Defendants)

65. Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

66. Labor Code section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide a compliant meal period. Employees are entitled to meal period of at least thirty 30 minutes per five hour work period.

67. Plaintiff and the Class members consistently worked more than 5 hour shifts, but Plaintiff and the Class members were not provided with additional compensation for meal periods which were missed, truncated or tardy due to the failure of one or more of the Defendants to provide a compliant meal period. Plaintiff and the Class members consistently worked more than 10 hour shifts, but Plaintiff and the Class members were not provided with additional compensation for second meal periods which were missed, truncated or tardy due to the failure of one or more of the Defendants to provide a compliant meal period. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are entitled to damages in an amount equal to one hour of wages per missed meal break, in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

(Failure To Provide Proper Rest Periods Labor Code §226.7)

(By Plaintiff individually and on behalf of the Class and against all Defendants)

68. Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

69. Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each rest period the employer fails to provide a compliant rest period. Employees are entitled to a rest period of ten minutes for every four hours worked or major

1 fraction thereof.

2 70. Plaintiff and the Class members consistently worked over four hour shifts, but
3 defendant failed to provide them with the requisite ten minute rest period. Pursuant to Labor
4 Code section 226.7, Plaintiff and the Class members are entitled to damages in an amount
5 equal to one hour of wages per missed rest period, in an amount to be proven at trial.

6 **FIFTH CAUSE OF ACTION**

7 (Failure To Provide Itemized Wage Statements Labor Code § 226)

8 (By Plaintiff individually and on behalf of the Class and against all Defendants)

9 71. Plaintiff realleges and incorporates herein by reference the allegations
10 contained in this Complaint as though fully set forth herein.

11 72. Defendants knowingly and intentionally failed to comply with Labor Code
12 section 226(a), which requires Defendants to provide the name of the legal entity which is
13 the employer, itemize in wage statements all deductions from payment of wages and
14 accurately report total hours worked by Plaintiff and members of the Class.

15 73. Wage Order 7-2001(7) requires Defendants to maintain time records showing,
16 among other things, when the employee begins and ends each work period and total daily
17 hours worked in an itemized wage statement. Time records must also show all deductions
18 from payment of wages and accurately report total hours worked by Plaintiff and members
19 of the Class. The wage statements fail to identify the name of the legal entity which is the
20 employer. (The wage statements list two different entities, but do not identify the actual
21 employer, creating confusion.) Further, under Naranjo v. Spectrum, Case No. S258966
22 (May 23, 2022), there are derivative violations for failure to pay and report meal penalties.

23 74. An employee suffering injury as a result of a knowing and intentional failure
24 by an employer to comply with Labor Code section 226(a) is entitled to recover the greater
25 of all actual damages of \$50 for the initial pay period in which a violation occurs and \$100
26 per employee for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of \$4,000 dollars.
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3 **SIXTH CAUSE OF ACTION**

4 (Waiting Time Penalties Labor Code § 203)

5 (By Plaintiff individually and on behalf of the Class and against all Defendants)

6 75. Plaintiff realleges and incorporates herein by reference the allegations
7 contained in this Complaint as though fully set forth herein.

8 76. Defendants' failure to pay wages, as alleged above, was willful in that MAJCO
9 knew wages were due but failed to pay them. This entitles Plaintiff and members of the
10 Class who are no longer working as hourly workers to penalties under Labor Code § 203,
11 which provides that an employee's wages shall continue as penalty until paid for a period of
12 up to 30 days from the time they were due. Under the Naranjo decision, Plaintiff is also
13 entitled to continuing wages for missed meal and rest breaks.

14 77. Defendants failed to pay Plaintiff and relevant members of the Class a sum
15 certain at the time of termination or within 72 hours of their resignation, and have failed to
16 pay those sums for 30 days thereafter. Pursuant to Labor Code section 203, Plaintiff and
17 relevant members of the Class are entitled to a penalty in the amount of their respective
18 daily wage multiplied by 30 days.

19 **SEVENTH CAUSE OF ACTION**

20 (Failure To Provide Indemnification of Business Expenses Labor Code §2802)

21 (By Plaintiff individually and on behalf of the Class and against all Defendants)

22 78. Plaintiff realleges and incorporates herein by reference the allegations
23 contained in this Complaint as though fully set forth herein.

24 79. Labor Code section 2802 requires Defendants to reimburse Plaintiff and
25 members of the Class for the expenses incurred by them in the performance of their job
26 duties, including but not limited to, expenses incurred by the use of their vehicles,
27 insurance, rental fees, mileage, cell phone usage, uniforms, equipment purchases, and
28 telephone usage resulting from the performance of their job duties.

80. Defendants violated Labor Code section 2802 because it required Plaintiff

1 and members of the Class to incur and pay for such expenses in the discharge of their
2 employment duties and without reimbursement.

3 81. As a proximate result, Plaintiff and members of the Class have been
4 damaged in an amount according to proof at trial.

5 **EIGHTH CAUSE OF ACTION**

6 (Improper Deductions From Wages, Labor Code § 221)

7 (By Plaintiff individually and on behalf of the Class and against all Defendants)

8 82. Plaintiff realleges and incorporates herein by reference the allegations
9 contained in this Complaint as though fully set forth herein.

10 83. Labor Code section 221 prohibits Defendants from deducting from employee
11 wages paid toward employee compensation.

12 84. Plaintiff is informed and believed, and on that basis alleges, that Defendants
13 improperly deducted portions of Plaintiff's wages and the wages of members of the Class,
14 in violation of Labor Code section 221. For example, Class Members were not provided
15 with proper meal breaks, but they had 30 minutes of work time deducted from their
16 paychecks each day.

17 85. As a proximate result, Plaintiff and members of the Class have been damaged
18 in an amount according to proof at trial.

19 **NINTH CAUSE OF ACTION**

20 (Unfair Competition Business and Professions Code Section 17200)

21 (By Plaintiff individually and on behalf of the Class and against all Defendants)

22 86. Plaintiff realleges and incorporates herein by reference the allegations
23 contained in this Complaint as though fully set forth herein.

24 87. The conduct of Defendants as alleged in this Complaint has been, and
25 continues to be, unfair, unlawful, deceptive, and harmful to Plaintiff, the Class, and the
26 public in general. Plaintiff seeks to enforce important rights affecting the public interest
27 within the meaning of code of Civil Procedure section 1021.5.
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1 88. Plaintiff is a “person” within the meaning of Business & Professions Code
2 section 17204, and, therefore, has standing to bring this cause of action for injunctive
3 relief, restitution, and other appropriate equitable relief.

4 89. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
5 business practices.

6 90. California’s wage and hours laws, including the laws described in this
7 Complaint, reflect public policies that are fundamental in the State of California. The
8 FLSA reflects a public policy that is fundamental in the United States. These public
9 policies include the importance of providing employees with proper compensation, meal
10 periods, and rest periods.

11 91. Through the conduct alleged in this Complaint, Defendants have acted
12 contrary to these public policies, have violated the California Labor Code, and have
13 engaged in other unlawful, unfair, and deceptive business practices in violation of
14 California's Business & Professions Code. As a result, Plaintiff, and all persons similarly
15 situated (including the Class members alleged in this Complaint) have been deprived of
16 rights, benefits, and privileges guaranteed to employees by law.

17 92. Defendants, by engaging in the conduct described in this Complaint, either
18 knew or should have known that its conduct was unlawful.

19 93. As a proximate result of Defendants’ conduct, Plaintiff and Class members
20 alleged herein have been damaged in a sum to be proven at trial.

21 94. This Court should therefore make such orders and/or judgments as may be
22 necessary to require Defendants to pay to Plaintiff and the members of the Class the
23 money Defendants have heretofore unlawfully failed to pay them.

24 **TENTH CAUSE OF ACTION [POTENTIAL]**

25 (California Labor Code - Private Attorneys General Act)

26 (By Plaintiff individually and on behalf of the Class and against all Defendants)

27 95. Plaintiff realleges and incorporates herein by reference the allegations
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1 contained in this Complaint as though fully set forth herein.

2 96. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately
3 January 6, 2025, Plaintiff gave written notice by certified mail to the California Labor and
4 Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code
5 alleged to have been violated by MAJCO, including the theories set forth in the
6 Complaint. Also on that day, Plaintiff gave written notice by certified mail to MAJCO of
7 the specific provisions of the Labor Code alleged to have been violated by them.

8 97. After the appropriate passage of time, Plaintiff “may as a matter of right
9 amend [the] existing [C]omplaint to add a cause of action arising under [the Labor Code
10 Private Attorney General Act (“LCPAGA”)].” Cal. Lab. Code § 2699.3(a)(2)(C). The
11 LCPAGA establishes civil penalties for violations of the Labor Code, including the
12 violations alleged in this Complaint. When the time has expired, Plaintiff will amend this
13 complaint to allege the PAGA cause of action.

14 98. Plaintiff contends that section 2698 et seq. of the Labor Code enables him to
15 recover civil penalties under the LCPAGA, as well as attorney’s fees and costs, from
16 MAJCO through a civil action on behalf himself and other aggrieved employees.

17 99. Plaintiff will seek to recover the PAGA penalties through a representative
18 action permitted by PAGA and the California Supreme Court in *Arias v. Superior*
19 *Court*, 46 Cal. 4th 969 (2009). Plaintiff will seek civil penalties pursuant to PAGA
20 for violations of the following Labor Code provisions:

- 21 a. failure to pay overtime wages to Hourly workers in violation of Wage Order
22 No. 16 and Labor Code §§ 510, 558, 1194 and 1198;
- 23 b. failure to pay minimum wages to Hourly workers in violation of Wage Order
24 No. 16 and Labor Code §§ 1182.12, 1194, and 1197;
- 25 c. failure to provide meal and rest periods to Hourly workers in violation of
26 Wage Order No. 16 and Labor Code §§ 226.7, 512, and 558;
- 27 d. failure to provide itemized wage statements to Hourly workers in violation
28 of Labor Code §§ 226(a), 1174, and 1174.5;

- 1 e. failure to provide prompt payment of wages upon termination and/or
2 resignation of Hourly workers in violation of Labor Code §§ 201, 202, 203;
- 3 f. failure to reimburse Hourly workers for all reasonably necessary
4 expenditures and losses incurred by Hourly workers in direct consequence of the
5 discharge of their duties, including but not limited costs of their vehicles,
6 insurance, rental fees, mileage, cell phone usage, unions, equipment purchases, and
7 telephone usage in violation of Labor Code § 2802;
- 8 g. improper deductions from wages in violation of Labor Code §§ 221 and
9 225.5.
- 10 h. willful misclassification of Hourly workers as Independent Contractors in
11 violation of Labor Code §226.8;
- 12 i. failure to keep required payroll records in violation of Wage Order No. t and
13 Labor Code §§ 1174 and 1174.5.
- 14 j. failure to promptly pay owed wages in violation of Labor Code §§ 201.3,
15 204.
- 16 k. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558
17 imposes a civil penalty in addition to any other penalty provided by law of fifty
18 dollars (\$50) for initial violations for each underpaid employee for each pay period
19 for which the employee was underpaid in addition to an amount sufficient to
20 recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
21 each underpaid employee for each pay period for which the employee was
22 underpaid in addition to an amount sufficient to recover underpaid wages.
23 Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
24 Aggrieved Employees pursuant to Labor Code § 558(a)(3).
- 25 l. With respect to violations of Labor Code § 226(a), Labor Code § 226.3
26 imposes a civil penalty in addition to any other penalty provided by law of two
27 hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one
28 thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of
Labor Code § 226(a).
- m. With respect to violations of Labor Code § 204, Labor Code § 210 imposes a

1 civil penalty of \$100, and for subsequent violations \$200.

2 n. With respect to violations of Labor Code § 1174, Labor Code § 1174.5
3 imposes a civil penalty of \$500.

4 o. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars
5 (\$100) per pay period, per aggrieved employee for initial violations, and two
6 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent
7 violations for all Labor Code provisions for which a civil penalty is not specifically
8 provided, including the applicable Wage Order and Labor Code §§ 201, 201.3, 202,
9 203, 221, 226(a), 226.7, 226.8, 510, 1174, 1182.12, 1194, 1197, 1198, and 2802.

10 **ELEVENTH CAUSE OF ACTION**

11 (Failure to maintain Accurate Payroll Time Records,
12 Labor Code section 1174, IWC Wage Order No. 16)

13 (On Behalf of Plaintiff and the Class Against Defendant)

14 100. Plaintiff repleads, realleges, and incorporates by reference each and every
15 allegation set forth in the Complaint.

16 101. Defendant MAJCO has violated California Labor Code section 1174 and
17 IWC Wage Order No. 16 by willfully failing to keep required payroll records showing the
18 actual hours and/or the begin and end time worked each day by Plaintiff. Indeed, the IWC
19 Wage Order requires that the employer maintain “[t]ime records showing when the
20 employee begins and ends each work period.” 8 Cal. Code Regs. § 11160(6)(A)(1).
21 Defendant MAJCO failed to properly maintain such records. “[W]here the employer has
22 failed to keep records required by statute, the consequences for such failure should fall on
23 the employer, not the employee.” Donohue v. AMN Services, 11 Cal. 5th 58 (2021).

24 102. As a direct and proximate result of Defendant’s failure to maintain payroll
25 records, Plaintiff suffered actual economic harm as he has been precluded from accurately
26 monitoring the number of hours worked and thus seeking all accrued pay.

27 103. Plaintiff also request relief as described below.
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TWELFTH CAUSE OF ACTION

(Cal. Lab. Code §§ 226 & 1198.5—Failure to Provide Employment Records Upon Request)

(On Behalf of Plaintiff Against Defendant MAJCO)

104. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in this Complaint.

105. Pursuant to Labor Code section 226(b), an employer shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer.

106. Plaintiff has requested that Defendant MAJCO permit inspection or copying of each Plaintiff's employment records pursuant to Labor Code section 226(b). Defendant MAJCO has failed to provide Plaintiff with all of his employment records within 21 days of her request. For example, Defendant failed to provide any time and/or punch records for Plaintiff Shipman and Plaintiff.

107. Pursuant to Labor Code section 1198.5 "has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee." Cal. Lab. Code § 1198.5.

108. Plaintiff requested that Defendant MAJCO permit inspection or copying of his employment records pursuant to Labor Code section 1198.5. Defendant MAJCO has failed to provide Plaintiff with an opportunity to inspect or copy all of his employment records within 30 days of her request.

109. Pursuant to Labor Code section 1198.5(k) Plaintiff is entitled, and hereby seeks to recover from Defendant MAJCO a seven-hundred-fifty dollar (\$750) penalty, reasonable attorney's fees, and the cost of bringing this cause of action.

110. Pursuant to Labor Code section 226(f) and (g), Plaintiff is entitled, and hereby seeks to recover from Defendant MAJCO a seven-hundred-fifty dollar (\$750) penalty, reasonable attorneys' fees, and the cost of bringing this cause of action.

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THIRTEENTH CAUSE OF ACTION

(Retaliation and Wrongful Termination in Violation of California Labor Code §§ 1102.5 and 6310)

(On Behalf of Plaintiff and Shipman Against All Defendants)

111. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

112. An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has a reasonable cause to believe that the information discloses a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

113. This is a claim for relief arising out of retaliation by Defendant against Plaintiff for resisting unlawful labor practices and unsafe working conditions, putting workers at risk.

114. California Labor Code section 1102.5 provides, in relevant part that:

- (a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
- (b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
- (c) An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

- 1 (d) An employer may not retaliate against an employee for having exercised his or
2 her rights under subdivision (a), (b), or (c) in any former employment.
- 3 (e) A report made by an employee of a government agency to his or her employer
4 is a disclosure of information to a government or law enforcement agency
5 pursuant to subdivisions (a) and
- 6 (f) In addition to other penalties, an employer that is a corporation or limited
7 liability company is liable for a civil penalty not exceeding ten thousand dollars
8 (\$10,000) for each violation of this section.
- 9 (g) This section does not apply to rules, regulations, or policies which implement,
10 or to actions by employers against employees who violate, the confidentiality
11 of the lawyer-client privilege of Article 3 (commencing with Section 950), the
12 physician-patient privilege of Article 6 (commencing with Section 990) of
13 Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

14 Cal. Lab. Code §1102.5.

15 115. California Labor Code section 6310 makes it illegal to retaliate against
16 employees who complain, either verbally or in writing, either to their employer or to the
17 government about unsafe working conditions or work practices. Any employee who is
18 discharged, threatened with discharge, demoted, suspended, or in any other manner
19 discriminated against in the terms and conditions of employment by his or her employer
20 because the employee has made a bona fide oral or written complaint to the division, other
21 governmental agencies having statutory responsibility for or assisting the division with
22 reference to employee safety or health, his or her employer, or his or her representative, of
23 unsafe working conditions, or work practices, in his or her employment or place of
24 employment, or has participated in an employer-employee occupational health and safety
25 committee, shall be entitled to reinstatement and reimbursement for lost wages and work
26 benefits caused by the acts of the employer. Cal. Lab. Code §6310(b).

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1 116. As a proximate result of Defendant's wrongful conduct, Plaintiff has
2 suffered, and continues to suffer, substantial losses in earnings and job benefits in an
3 amount to be determined according to proof at the time of trial. Defendant is also liable to
4 pay penalties pursuant to California Labor code § 1102.5(f).

5 117. As a further proximate result of Defendant's wrongful conduct, Plaintiff has
6 suffered, and continues to suffer, humiliation, embarrassment, emotional distress and
7 mental anguish, all in an amount to be determined according to proof at the time of trial.

8 118. In doing the acts herein alleged, Defendant acted with oppression, fraud,
9 malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore
10 entitled to punitive damages against Defendant in an amount appropriate to punish and
11 make an example of Defendant.

12 **FOURTEENTH CAUSE OF ACTION**

13 (Retaliation and Wrongful Termination in Violation of Public Policy)

14 (On Behalf of Plaintiff Against Defendants)

15 119. Plaintiff repleads, realleges, and incorporates by reference each and every
16 allegation set forth in the Complaint.

17 120. Jurisdiction is invoked in this Court pursuant to the public policy and
18 common law of the State of California, pursuant to Tameny v. Atlantic Richfield
19 Company, 27 Cal. 3d 167 (1980).

20 121. Under California law, there is a fundamental and well-established public
21 policy against retaliation for opposing unlawful activities, including, but not limited to,
22 complaining about and filing complaints with governmental agencies for safety violations.
23 This fundamental public policy is embodied in the California Constitution and California
24 statutory law. Adverse employment actions taken by an employer in response to such
25 activity are contrary to such public policy and are thus actionable under the common law
26 of California.

27 122. This is a claim for relief arising out of retaliation by Defendant against
28 Plaintiff for: (a) notifying Defendant that it was committing labor law violations and (b)

1 notifying Defendant that it was disposing of hazardous waste (refrigerant) in an unsafe
2 manner.

3 123. As set forth above, Defendant retaliated against Plaintiff by terminating
4 Plaintiff's employment. In terminating Plaintiff for reporting wage/hour and safety
5 violations, Defendant violated the fundamental public policies embodied in California
6 Labor Code section 1102.5 and other provisions of law identified herein.

7 124. As a proximate result of Defendant's wrongful conduct, Plaintiff has
8 suffered, and continues to suffer, substantial losses in earnings and job benefits in an
9 amount to be determined according to proof at the time of trial.

10 125. As a further proximate result of Defendant's wrongful conduct, Plaintiff has
11 suffered, and continues to suffer, humiliation, embarrassment, emotional distress and
12 mental anguish, all in an amount to be determined according to proof at the time of trial.

13 126. In doing the acts herein alleged, Defendant acted with oppression, fraud,
14 malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore
15 entitled to punitive damages against Defendant in an amount appropriate to punish and
16 make an example of Defendant.

17 **FIFTEENTH CAUSE OF ACTION**

18 (Common Law Claim for Discrimination and Retaliation)

19 (On Behalf of Plaintiff Against Defendants)

20 127. Plaintiff repleads, realleges, and incorporates by reference each and every
21 allegation set forth in the Complaint.

22 128. In perpetrating the above-described conduct, Defendants engaged in a pattern
23 and practice of unlawful harassment and discrimination in violation of California's public
24 policy against discrimination and retaliation as embodied in the Fair Employment and
25 Housing Act (Government Code section 12900 *et seq.*), the California Constitution,
26 Article 1, Section 8, and other related laws. Defendant and/or its agents/employees
27 discriminated against plaintiff and/or failed to take immediate and appropriate corrective
28 action. The harassment was sufficiently pervasive and severe as to alter conditions of

1 employment and to create a hostile or abusive work environment.

2 129. The conduct of Defendants and/or its agents/employees as described herein
3 was malicious, fraudulent, and/or oppressive, and done with a willful and conscious
4 disregard for Plaintiff's rights and for the deleterious consequences of Defendant's
5 actions. Defendant and its agents/employees or supervisors, authorized, condoned and
6 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive
7 damages against Defendant.

8 130. Defendant created intolerable, offensive work conditions. Defendant's
9 termination of Plaintiff in violation of the law constitutes wrongful discharge of Plaintiff in
10 violation of public policy. As a proximate result of this wrongful discharge, Plaintiff has
11 suffered losses in earnings and job benefits, as well as humiliation, embarrassment, mental
12 and emotional distress, and discomfort. Plaintiff is entitled to damages in an amount
13 according to proof.

14 **SIXTEENTH CLAIM FOR RELIEF**

15 (Misclassification of Employees as Independent Contractors)

16 (By Plaintiff individually and on behalf of the Class and against all Defendants and by
17 Plaintiff individually and on behalf of the Subclass and against all Defendants)

18 131. Plaintiff realleges and incorporate herein by reference the allegations contained
19 in this Complaint as though fully set forth herein.

20 132. Section 226.8 of the California Labor Code provides, in pertinent part:

21 (a) It is unlawful for any person or employer to engage in any of the
22 following activities:

23 (1) Willful misclassification of an individual as an independent contractor.

24 (2) Charging an individual who has been willfully misclassified as an
25 independent contractor a fee, or making any deductions from compensation,
26 for any purpose, including for goods, materials, space rental, services,
27 government licenses, repairs, equipment maintenance, or fines arising from
28

1 the individual's employment where any of the acts described in this paragraph
2 would have violated the law if the individual had not been misclassified.

3 (b) If the Labor and Workforce Development Agency or a court issues a
4 determination that a person or employer has engaged in any of the
5 enumerated violations of subdivision (a), the person or employer shall be
6 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
7 not more than fifteen thousand dollars (\$15,000) for each violation, in
8 addition to any other penalties or fines permitted by law.

9 (c) If the Labor and Workforce Development Agency or a court issues a
10 determination that a person or employer has engaged in any of the
11 enumerated violations of subdivision (a) and the person or employer has
12 engaged in or is engaging in a pattern or practice of these violations, the
13 person or employer shall be subject to a civil penalty of not less than ten
14 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
15 (\$25,000) for each violation, in addition to any other penalties or fines
16 permitted by law.

17 . . .

18 (e) If the Labor and Workforce Development Agency or a court issues a
19 determination that a person or employer has violated subdivision (a), the
20 agency or court, in addition to any other remedy that has been ordered, shall
21 order the person or employer to display prominently on its Internet Web site,
22 in an area which is accessible to all employees and the general public, or, if
23 the person or employer does not have an Internet Web site, to display
24 prominently in an area that is accessible to all employees and the general
25 public at each location where a violation of subdivision (a) occurred, a notice
26 that sets forth all of the following:

27 (1) That the Labor and Workforce Development Agency or a court, as
28

1 applicable, has found that the person or employer has committed a serious
2 violation of the law by engaging in the willful misclassification of
3 employees.

4 (2) That the person or employer has changed its business practices in order
5 to avoid committing further violations of this section.

6 (3) That any employee who believes that he or she is being misclassified as
7 an independent contractor may contact the Labor and Workforce
8 Development Agency. The notice shall include the mailing address, email
9 address, and telephone number of the agency.

10 (4) That the notice is being posted pursuant to a state order.

11 (f) In addition to including the information specified in subdivision (e), a
12 person or employer also shall satisfy the following requirements in preparing
13 the notice:

14 (1) An officer shall sign the notice.

15 (2) It shall post the notice for one year commencing with the date of the
16 final decision and order.

17 (g) (1) In accordance with the procedures specified in Sections 98 to 98.2,
18 inclusive, the Labor Commissioner may issue a determination that a person
19 or employer has violated subdivision (a).

20 (2) If, upon inspection or investigation, the Labor Commissioner
21 determines that a person or employer has violated subdivision (a), the Labor
22 Commissioner may issue a citation to assess penalties set forth in
23 subdivisions (b) and (c) in addition to any other penalties or damages that are
24 otherwise available at law. The procedures for issuing, contesting, and
25 enforcing judgments shall be the same as those set forth in Section 1197.1.

26 (3) The Labor Commissioner may enforce this section pursuant to
27 Section 98 or in a civil suit.
28

1 (h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or
2 disciplinary action pursuant to subdivision (d) or (e) shall remain in effect
3 against any successor corporation, owner, or business entity that satisfies
4 both of the following:

5 (1) Has one or more of the same principals or officers as the person or
6 employer subject to the penalty or action.

7 (2) Is engaged in the same or a similar business as the person or employer
8 subject to the penalty or action.

9 (i) For purposes of this section, the following definitions apply:

10 (1) "Determination" means an order, decision, award, or citation issued by
11 an agency or a court of competent jurisdiction for which the time to appeal
12 has expired and for which no appeal is pending.

13 (2) "Labor and Workforce Development Agency" means the Labor and
14 Workforce Development Agency or any of its departments, divisions,
15 commissions, boards, or agencies.

16 (3) "Officer" means the chief executive officer, president, any vice
17 president in charge of a principal business unit, division, or function, or any
18 other officer of the corporation who performs a policymaking function. If the
19 employer is a partnership, "officer" means a partner. If the employer is a sole
20 proprietor, "officer" means the owner.

21 (4) "Willful misclassification" means avoiding employee status for an
22 individual by voluntarily and knowingly misclassifying that individual as an
23 independent contractor.

24 (j) Nothing in this section is intended to limit any rights or remedies
25 otherwise available at law.

26 Cal. Lab. Code §226.8.

27 133. Section 2753 of the California Labor Code provides:
28

1 (a) A person who, for money or other valuable consideration, knowingly
2 advises an employer to treat an individual as an independent contractor to
3 avoid employee status for that individual shall be jointly and severally liable
4 with the employer if the individual is found not to be an independent
5 contractor.

6 (b) This section does not apply to the following persons:

7 (1) A person who provides advice to his or her employer.

8 (2) An attorney authorized to practice law in California or another United
9 States jurisdiction who provides legal advice in the course of the practice of
10 law.

11 Cal. Lab. Code §2753.

12 134. During their employment by Defendants on information and belief,
13 Plaintiff and the other members of the Class and Subclass were willfully
14 misclassified as independent contractors, in violation of California Labor Code
15 section 226.8, MAJCO having actual knowledge of the misclassification.

16 135. Plaintiff and members of the Class and Subclass are entitled to recover
17 damages and civil penalties under section 226.8 of the California Labor Code in an
18 amount according to proof. Plaintiff and members of the Class and are also entitled
19 to recover costs and reasonable attorneys' fees under section 2699 of the California
20 Labor Code.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment as follows:

23 1. For an Order that this action may proceed and be maintained as a class
24 action, with an appropriate subclass or subclasses; that the named plaintiff be appointed
25 class representative, and that plaintiff's counsel be named class counsel;

26 2. That, under the First Cause of Action for unpaid overtime wages, this Court
27 enter judgment in favor of award Plaintiff and other aggrieved former and current
28

1 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
2 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
3 sections of the Labor Code.

4 3. That, under the Second Cause of Action for unpaid minimum wages, this
5 Court enter judgment in favor of award Plaintiff and other aggrieved former and current
6 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
7 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
8 sections of the Labor Code.

9 4. That, under the Third Cause of Action for failing to properly provide meal
10 periods, this Court enter judgment in favor of Plaintiff, and other aggrieved former and
11 current employees, their wages, damages, liquidated damages, penalties, civil penalties,
12 attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and
13 other relevant sections of the Labor Code.

14 5. That, under the Fourth Cause of Action for failing to properly provide rest
15 periods, this Court enter judgment in favor of award Plaintiff and other aggrieved former
16 and current employees their wages, damages, liquidated damages, penalties, civil
17 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
18 218.5 and other relevant sections of the Labor Code.

19 6. That, under the Fifth Cause of Action for failing to provide proper itemized
20 wage statements, this Court enter judgment in favor of award Plaintiff and other aggrieved
21 former and current employees their wages, damages, liquidated damages, penalties, civil
22 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
23 218.5 and other relevant sections of the Labor Code.

24 7. That, under the Sixth Cause of Action for failing to properly provide final
25 wages upon termination of employment, this Court enter judgment in favor of Plaintiff
26 and other aggrieved former and current employees and award them their wages, damages,
27 liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all
28

1 according to proof, pursuant to section 218.5 and other relevant sections of the Labor
2 Code.

3 8. That, under the Seventh Cause of Action for failing to properly indemnify
4 employees for their out of pocket expenses in violation of section 2802 of the California
5 Labor Code, this Court enter judgment in favor of Plaintiff and other aggrieved former
6 and current employees and award them their wages, damages, liquidated damages,
7 penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant
8 to section 218.5 and other relevant sections of the Labor Code.

9 9. That, under the Eighth Cause of Action for taking improper deductions from
10 wages, this Court enter judgment in favor of Plaintiff and other aggrieved former and
11 current employees and award them their wages, damages, liquidated damages, penalties,
12 civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
13 218.5 and other relevant sections of the Labor Code.

14 10. That, under the Ninth Cause of Action for violation of the California
15 Business and Professions Code, this Court enter judgment in favor of Plaintiff and other
16 aggrieved former and current employees and award them their wages, damages, liquidated
17 damages, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
18 sections of the Business and Professions Code, deterring employment by Defendants or its
19 agents and employees of any future unlawful, unfair, or deceptive practice.

20 11. That, under the Tenth through Sixteenth Causes of Action, this Court enter
21 judgment in favor of Plaintiff and award them their wages, damages, liquidated damages,
22 penalties, interest, attorney's fees, and costs of suit, all according to proof, pursuant to the
23 relevant sections of the Labor Code.

24 12. For statutory attorney's fees pursuant to Labor Code sections 218.5, 227(e)
25 and 1194.

26 13. For costs of suit.

27 14. For prejudgment interest; and
28

1 15. For such other and further relief as this Court may deem proper and just.
2 Plaintiff demands a trial by jury as to all counts.
3

4 DATED: April 10, 2025

HARRIS & RUBLE



Alan Harris

David Garrett

Attorneys for Plaintiff