

FILED
Superior Court Of California,
Sacramento
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By Deputy
Case Number:
34-2022-00323567

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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

DANIEL PEREZ, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

METRO MAILING SERVICE INC., a
California Corporation;
KASEY COTULLA, an individual;
RICHARD WITHROW, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2022-00323567

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Failure to Reimburse Expenses
7. Unfair Competition
8. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff DANIEL PEREZ ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this Complaint against Defendants METRO MAILING SERVICE INC., a California Corporation; KASEY COTULLA, an individual; RICHARD WITHROW, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

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BY FAX
BY FAX

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PARTIES

5. DANIEL PEREZ is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, METRO MAILING SERVICE INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that KASEY COTULLA is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that KASEY KOTULLA is an owner, director, officer, and/or managing agent of METRO MAILING SERVICE INC. responsible for causing the violations outlined in the First through Sixth and Eighth causes of action. As such KASEY COTULLA is individually liable pursuant to California Labor Code section 558.1.

8. Plaintiff is informed and believes, and thereupon alleges, that RICHARD WITHROW is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that RICHARD WITHROW is an owner, director, officer, and/or managing agent of METRO MAILING SERVICE INC. responsible for causing the violations outlined in the First through Sixth and Eighth causes of action. As such RICHARD WITHROW is individually liable pursuant to California Labor Code section 558.1.

9. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

10. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common

1 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
2 joint venture, partnership and common enterprise.

3 12. Defendants, and each of them, now and/or at all times mentioned in this Complaint
4 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

5 13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
6 wrongs, complaints, injuries and/or damages alleged in this Complaint.

7 CLASS ALLEGATIONS

8 14. Plaintiff brings the First through Seventh Causes of Action on behalf of himself and
9 all others similarly situated as a class action pursuant to California Code of Civil Procedure section
10 382. The class which Plaintiff seeks to represent is composed of; and defined, as follows:

11 **Overtime Class:** All individuals who have, or continue to, work for
12 Defendants in California from July 18, 2018 to the present, except for
13 those covered by a valid collective bargaining agreement that expressly
14 provides for the wages, hours of work, working conditions of the
15 employees, and a regular hourly rate of 30 percent or more than the state
16 minimum wage for all employees covered by the collective bargaining
17 agreement.

18 **Meal Period Class:** All individuals who have, or continue to, work for
19 Defendants in California from July 18, 2018 to the present who worked at
20 least one shift over five (5) hours.

21 **Rest Period Class:** All individuals who have, or continue to, work for
22 Defendants in California from July 18, 2018 to the present who worked at
23 least one shift over three and one-half (3.5) hours.

24 **Wage Statement Class:** All individuals who have, or continue to, work
25 for Defendants in California from July 18, 2021 to the present who
26 received at least one wage statement from Defendants.

27 **Waiting Time Class:** All individuals who have, or continue to, work for
28 Defendants in California from July 18, 2019 to the present.

Reimbursement Class: All individuals who have, or continue to, work
for Defendants in California from July 18, 2018 to the present.

Paid Sick Time: All individuals who have, or continue to, work for
Defendants in California July 18, 2018, who worked for Defendants at
least 90 days, except for those covered by a valid collective bargaining

1 agreement that expressly provides for the wages, hours of work, working
2 conditions of the employees, and a regular hourly rate of 30 percent or
3 more than the state minimum wage for all employees covered by the
4 collective bargaining agreement.

5 15. This action has been brought and may be properly maintained as a class action,
6 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
7 defined community of interests in the litigation and the proposed class is easily ascertainable.

8 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
9 is impracticable under the circumstances of this case. While the exact number of class
10 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
11 Defendants have employed as many as fifty (50) individuals falling within the above
12 stated class definition throughout the State of California during the applicable statute of
13 limitations, who were subjected to the policies and practices outlined in this Complaint.
14 As such, joinder of all members of the putative class is not practicable.

15 (b) Common Questions Predominate: Common questions of law and fact exist as to all
16 members of the putative class and predominate over questions that affect only individual
17 members of the class. These common questions of law and fact include, without
18 limitation, the following:

- 19 (1) Whether Plaintiff and putative class members worked more than eight (8) hours in
20 a day and/or forty (40) hours in a week;
- 21 (2) Whether Defendants correctly calculated Plaintiff's and putative class members'
22 regular rates of pay;
- 23 (3) Whether Defendants failed to correctly calculate Plaintiff's and putative class
24 members' overtime pay;
- 25 (4) Whether Defendants had any policies or practices authorizing and permitting all
26 meal periods owed;
- 27 (5) Whether Defendants had a policy or practice to pay missed meal period
28 premiums;

- (6) Whether Plaintiff and putative class members were authorized and permitted to take meal periods;
- (7) Whether Defendants failed to correctly calculate missed meal period premiums;
- (8) Whether Defendants failed to pay Plaintiff and putative class members missed meal period premiums owed;
- (9) Whether Defendants had policies or practices authorizing and permitting all rest periods owed;
- (10) Whether Plaintiff and putative class members were authorized and permitted to take rest periods;
- (11) Whether Defendants failed to pay Plaintiff and putative class members rest period premiums;
- (12) Whether Defendants had any policies and practices to reimburse expenses incurred;
- (13) Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members received all reimbursements owed;
- (14) Whether Defendants had any policies and practices requiring personal cell phone use;
- (15) Whether Defendants paid putative class members all paid sick time owed to them;
- (16) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (17) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who worked 10-12 hour shifts multiple times in a week with shift differentials without taking all meal periods and paid

1 rest periods rest and meal periods, and were required to use personal cell phones for work
2 purposes resulting in a failure to pay overtime, failure to pay final wages, failure to pay
3 reimbursements, and unfair competition. Additionally, Defendants issued Plaintiff and
4 all members of the putative class wage statements that did not comply with Labor Code
5 section 226. As a result, Plaintiff and each member of the putative class will have
6 suffered the same type of harm and seek the same type of recovery based on the same
7 legal theories.

8 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
9 putative class. For all relevant times, Plaintiff resided in California and worked for
10 Defendants in California. Moreover, Plaintiff is an adequate representative of the
11 putative class as Plaintiff has no interests that are adverse to those of putative class
12 members. Additionally, Plaintiff has retained counsel who has substantial experience in
13 complex civil litigation and wage and hour matters.

14 (e) Superiority: A class action is superior to other available means for the fair and efficient
15 adjudication of the controversy since individual joinder of all members of the putative
16 class is impracticable. Class action treatment will permit a larger number of similarly
17 situated persons to prosecute their common claims in a single forum simultaneously,
18 efficiently, and without the unnecessary duplication of effort and expense that numerous
19 individual actions would engender. Further, as damages suffered by each individual
20 member of the class may be relatively small, the expenses and burden of the individual
21 litigation would make it difficult or impossible for individual members of the class to
22 redress the wrongs done to them, and an important public interest will be served by
23 addressing the matter as a class action. The cost to the court system of adjudication of
24 such individualized litigation would be substantial. Individualized litigation would also
25 present the potential for inconsistent or contradictory judgments.

26 16. Plaintiff is unaware of any difficulties that are likely to be encountered in the
27 management of this action that would preclude its maintenance as a class action.

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GENERAL ALLEGATIONS

17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully set forth herein.

18. Plaintiff worked for Defendants, who operate a printing business, from approximately September 2019 to January 14, 2022, as a Certified Digital Operator. Plaintiff and similarly situated employees regularly worked overtime hours, *i.e.*, more than eight (8) hours in a day and/or forty (40) hours in a week. In addition to their basic hourly wages, Plaintiff and similarly situated employees were paid shift differentials when they worked night shifts, resulting in two different hourly rates being paid to Plaintiff and similarly situated employees. Plaintiff and similarly situated employees were paid two different hourly rates in the same workweeks they worked overtime hours but were not paid the correct overtime rates because Defendants failed to correctly calculate Plaintiff's and similarly situated employees' regular rates of pay to account for the value of the shift differentials. Thus, Plaintiff and similarly situated employees were not paid all overtime wages they were owed from Defendants.

19. Plaintiff and similarly situated employees did not receive all meal periods they were entitled to under the law. On occasions where Plaintiff and similarly situated employees did not receive legally compliant meal periods, Defendants would pay them meal period premiums. However, Defendants did not pay these premiums at the correct rate of pay because Defendants failed to take into account the value of shift differentials it paid to Plaintiff and similarly situated employees. Thus, Plaintiff and similarly situated employees were not paid all meal period premiums they were owed from Defendants.

20. Plaintiff and similarly situated employees were not authorized and permitted to take all rest periods they were entitled to under the law. Plaintiff and similarly situated employees were not able to take at least a ten-minute duty-free, paid rest period every four hours or major fraction thereof they worked. Defendants did not pay Plaintiff and similarly situated employees any rest period premiums for failing to provide legally compliant rest periods.

21. Plaintiff and similarly situated employees received paid sick leave that was not paid at the correct hourly rate. Defendants failed to account for the value of shift differentials paid to Plaintiff and similarly situated employees when calculating Plaintiff's and similarly situated employees' regular rates

1 of pay for the purpose of paying paid sick leave. Thus, Plaintiff and similarly situated employees were
2 not paid all paid sick leave they were owed from Defendants.

3 22. Defendants required Plaintiff and similarly situated employees to use their personal
4 cellphones for work without reimbursing them. For example, as part of Plaintiff's job, he was regularly
5 required to contact technicians using his personal cellphone. Defendants did not have any policy or
6 practice to reimburse Plaintiff and similarly situated employees for the use of personal cellphone for
7 work. Defendants owe Plaintiff and similarly situated employees reimburse for personal cellphone use.

8 23. Defendants failed to provide Plaintiff and similarly situated employees with accurate
9 wage statements. The wage statements Defendants issued to Plaintiff and similarly situated employees
10 did not accurately identify all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate, the correct amount of gross and net wages
12 earned, and meal and rest premiums earned.

13 24. As of this date of this complaint, Defendants have not paid Plaintiff and similarly situated
14 employees all overtime wages, paid sick leave, and meal and rest period premiums owed to them.

15 25. Defendant METRO MAILING SERVICE, INC. identified Defendant KASEY
16 COTULLA and Defendant RICHARD WITHROW in its filings with the California Secretary of State
17 during the class period as Officers and Directors. Plaintiff is informed and believes that KASEY
18 COTULLA and RICHARD WITHROW were responsible for creating and electing to implement
19 METRO MAILING SERVICE INC.'s payroll and compensation policies and practices or that KASEY
20 COTULLA AND RICHARD WITHROW were aware of such policies and practices and ratified them.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**
23 **FAILURE TO PAY OVERTIME WAGES**
24 **(As to all Defendants)**

25 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
26 set forth herein.

27 27. During the period Plaintiff was employed by Defendants, Defendants were required to
28 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for

1 hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 4, section (3)(A);
2 Cal. Lab. Code §§ 510, 1194.

3 28. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
4 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
5 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
6 worked at their regular rate of pay.

7 29. Plaintiff and similarly situated employees were not exempt from overtime protections
8 employees under the California Wage Orders and Labor Code.

9 30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
10 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
11 the extent pertinent as if set forth here in full.

12 **SECOND CAUSE OF ACTION**
13 **MEAL PERIOD VIOLATIONS**
14 **(As to all Defendants)**

15 31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully
16 set forth herein.

17 32. An employer must provide an employee a meal period in accordance with the
18 applicable Wage Order, and California Labor Code sections 226.7 and 512.

19 33. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
20 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
21 minutes for each work period of more than five (5) hours.

22 34. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
23 provide that employers may not employ employees for a work period for more than ten (10) hours
24 per day without providing the employee with a second meal period of at least thirty (30) minutes.
25 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
26 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
27 (1) hour of pay at their regular rate of compensation for each meal period not provided.

28 35. Defendants employed Plaintiff and similarly situated employees for periods of more
than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal

1 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
2 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
3 employees to take their first meal period before the completion of their fifth hour of work and failed
4 to allow Plaintiff and similarly situated employees to take their second meal period before the
5 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
6 rights to all meal periods throughout their employment.

7 36. Defendants further failed to pay Plaintiff and similarly situated employees the
8 applicable meal period premiums for any such missed meal breaks. Plaintiff and similarly situated
9 employees had shift differentials and were not paid accurate meal premiums according to their shifts.

10 37. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
11 employees have been damaged as stated in the section below entitled "DAMAGES," which is
12 incorporated here to the extent pertinent as if set forth here in full.

13 **THIRD CAUSE OF ACTION**
14 **REST PERIOD VIOLATIONS**
(As to all Defendants)

15 38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though fully
16 set forth herein.

17 39. An employer must provide an employee a rest period in accordance with the
18 applicable Wage Order and California Labor Code section 226.7.

19 40. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
20 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
21 four (4) hours or a major fraction thereof.

22 41. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
23 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
24 they worked more than four (4) hours or a major fraction thereof.

25 42. Defendants further failed to pay Plaintiff and similarly situated employees the
26 applicable rest period premiums for any such missed rest periods.

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43. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

44. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 43 as though fully set forth herein.

45. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions 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.

46. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, gross and net wages earned, and meal and rest premiums earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' failure to calculate. Plaintiff and

1 similarly situated employees were not able to promptly and easily determine their total hours worked
2 from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered
3 confusion over whether they received all wages owed and were prevented from effectively
4 challenging information on their wage statements.

5 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
6 employees have been damaged as stated in the section below entitled "DAMAGES," which is
7 incorporated here to the extent pertinent as if set forth here in full.

8 **FIFTH CAUSE OF ACTION**
9 **WAITING TIME PENALTIES**
10 **(As to all Defendants)**

11 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully
12 set forth herein.

13 49. An employer must pay an employee who is terminated all unpaid wages immediately
14 upon termination. *See* Cal. Lab. Code § 201.

15 50. An employer must pay an employee who resigns all unpaid wages within seventy-two
16 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

17 51. Plaintiff and similarly situated employees did not receive all wages, including overtime
18 wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the
19 required time after their separation from employment.

20 52. An employer who willfully fails to pay an employee wages in accordance with California
21 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
22 days. *See* Cal. Lab. Code § 203.

23 53. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
24 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
25 and similarly situated employees were not paid for all overtime hours worked and all missed meal and
26 rest period premiums, although all were accurately reflected on Plaintiff's timecards. Further,
27 Defendants had knowledge they did not authorize and permit Plaintiffs and similarly situated employees
28 to take rest periods. Defendants failed to accurately calculate overtime pay according to Plaintiff's and
similarly situated employees' shift differentials. Such conduct shows Defendants had knowledge of

1 earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining
2 wages owed.

3 54. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
5 thirty (30) days for Defendants' failure to pay all wages due.

6
7 **SIXTH CAUSE OF ACTION**
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

8 55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully
9 set forth herein.

10 56. California Labor Code section 2802(a) states that "An employer shall indemnify his or
11 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
12 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
13 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
14 unlawful."

15 57. Defendants required Plaintiff and similarly situated employees to use their personal cell
16 phones for work to contact technicians but failed to reimburse them for such use.

17 58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
18 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
19 the extent pertinent as if set forth here in full.

20 **SEVENTH CAUSE OF ACTION**
UNFAIR COMPETITION
21 **(As to Metro Mailing Service, Inc. and DOES 1 to 100)**

22 59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully
23 set forth herein.

24 60. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
25 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
26 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
27 California Business and Professions ("B&P") Code § 17200.

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1 61. Plaintiff and similarly situated employees were not paid all wages owed, including
2 overtime wages, and meal and rest period premiums, or reimbursed for business expenses, during their
3 employment or any time thereafter. Moreover, through Defendants conduct Plaintiff and similarly
4 situated employees were denied statutory protections regarding meal and rest periods.

5 62. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
6 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
7 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

8 63. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
9 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
10 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
11 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an
12 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

13 **EIGHTH CAUSE OF ACTION**
14 **PRIVATE ATTORNEYS GENERAL ACT**
 (As to all Defendants)

15 64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully
16 set forth herein.

17 65. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
18 following provisions of the Labor Code in their dealings with him and other similarly situated current
19 and former employees:

- 20 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay
21 Overtime Wages)
- 22 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
23 Statements)
- 24 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 25 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
26 Work in Any Industrial Welfare Commission Order)
- 27 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B)
28 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

66. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

67. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each

violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

6. As to the Sixth Cause of Action:

- a. An amount to be proven at trial;
b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

7. As to the Eighth Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation in an amount proven at trial;
b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

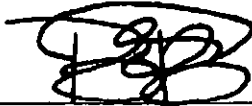
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

8. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
b. Injunctive and Declaratory relief;
c. Attorney's fees and costs as provided for by law; and
d. Interest.

Dated: August 31, 2022

Shimoda & Rodriguez Law, PC

By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff