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RAUL YANEZ ARDILES, on behalf of
All others similarly situated, and also on
behalf of all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

RAUL YANEZ ARDILES, an individual, on
behalf of all others similarly situated, and also
on behalf of all aggrieved employees

Plaintiffs,

v.

TRM MANUFACTURING, INC., a California
corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No. CVRI2302618

AMENDED COMPLAINT

CLASS ACTION:

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 226.7, 512, 1194);**
- 2. FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §226.7)**
- 3. FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §512);**
- 4. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 5. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 6. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**
- 7. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.).**

DEMAND OVER \$25,000

DEMAND FOR JURY TRIAL

1 Plaintiff RAUL YANEZ ARDILES, an individual on behalf of himself and all other similarly
2 situated employees and also on behalf of all aggrieved employees (hereinafter collectively referred to as
3 “Plaintiffs”), hereby files this Complaint against Defendant TRM MANUFACTURING, INC., a
4 California corporation; and DOES 1 through 20 (hereinafter collectively referred to as “Defendants”).
5 Plaintiffs are informed and believe, and thereon allege as follows:

6 **INTRODUCTION**

7 1. This is a civil action seeking recovery for Defendants’ violations of the California Labor
8 Code, California Business and Professions Code (“B&PC”), the applicable Wage Orders issued by the
9 California Industrial Welfare Commission (hereinafter, the “IWC Wage Orders”) and related common
10 law principles.

11 2. Plaintiffs’ action seeks monetary damages and injunctive relief, including full restitution
12 from Defendants as a result of Defendants’ unlawful, fraudulent and/or unfair business practices.

13 3. The acts complained of herein occurred, occur and will occur, at least in part, within the
14 time period from four (4) years preceding the filing of the original Complaint herein, up to and through
15 the time of trial for this matter although this should not be automatically be considered the statute of
16 limitations for any cause of action herein. This is hereinafter the “Class Period.”

17 **RELEVANT JOB TITLES**

18 4. For introductory and general information only (and not to be considered a proposed class
19 definition), the relevant job titles held by the California citizens in this action are Defendants’ non-exempt
20 employees who are paid on an hourly basis (hereinafter including any of Defendants’ job positions with
21 substantially similar titles and/or duties) along with all other non-exempt employees who worked within
22 the four years preceding the filing of the Complaint. These employees are hereinafter referred to as
23 “Class Plaintiffs.”

24 5. The general obligations and responsibilities of Class Plaintiffs are virtually identical from
25 region to region, district to district, office to office, facility to facility, and employee to employee. Any
26 differences in job activities between the different individuals in these positions were and are legally
27 insignificant to the issues presented in this action.

1 **JURISDICTION AND VENUE**

2 6. This Court is the proper court pursuant to CCP §295(a) and CCP §395.5, and this action
3 is properly filed in Riverside County, because Defendants' obligations and liability arise therein, because
4 Defendants maintain offices and transact business within Riverside County, and because the work that is
5 the subject of this action was performed by Plaintiff in Riverside County

6 7. The California Superior Court has jurisdiction in this matter because both the individual
7 and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits
8 of the Superior Court and will be established at trial, according to proof.

9 8. The California Superior Court also has jurisdiction in this matter because during their
10 employment with Defendants, Plaintiff, the members of the putative Classes herein, were all California
11 citizens and Defendant TRM MANUFACTURING, INC., conducted and transacted business throughout
12 Riverside County. Further there is no federal question at issue, as the issues herein are based solely on
13 California statutes and law.

14 **THE PARTIES**

15 **PLAINTIFF RAUL YANEZ ARDILES**

16 9. Plaintiff Raul Yanez Ardiles ("ARDILES") is an individual over the age of eighteen (18)
17 and is now, and at all time mentioned in this Complaint, a citizen of the State of California.

18 10. Plaintiff ARDILES has worked for Defendants as a machine operator from on or about
19 January 27, 2019 to the present, within the County of Riverside, California.

20 **DEFENDANT TRM MANUFACTURING, INC.**

21 11. Defendant TRM MANUFACTURING, INC., (hereinafter "TRM") was and is a
22 California corporation, qualified to do business and doing business at 375 TRM Circle, Corona,
23 California 92879. At all relevant times, Defendant TRM employed 26 or more employees.

24 **DOES 1 – 20, INCLUSIVE**

25 12. DOES 1 to 20, inclusive are now, and/or at all times mentioned in this Complaint were
26 licensed to do business and/or actually doing business in California.

13. Class Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 20, inclusive and for that reason, DOES 1 to 20 are sued under such fictitious names pursuant to CCP §474.

14. Class Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

16. Defendants, and each of them, proximately subjected Plaintiff to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

17. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

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

19. Defendants, and each of them, at all times mentioned in this Complaint, concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

20. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

21. Defendants, and each of them, at all times mentioned in this Complaint, aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

1 22. Class Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
2 and each of them, including those defendants named as DOES 1-20 acted in concert with one another to
3 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one
4 another in the wrongful acts alleged herein, and/or attempted to do so. Class Plaintiffs are further
5 informed and believe, and based thereupon allege, that Defendants, and each of them, including those
6 defendants named as DOES 1-20, and each of them, formed and executed a conspiracy or common plan
7 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein
8 done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

9 23. Whenever and wherever reference is made in this complaint to any act or failure to act by
10 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
11 and/or failures to act by each Defendant acting individually, jointly and severally.

12 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

13 24. Class Plaintiffs are informed and believe, and based thereon allege, that there exists such
14 a unity of interest and ownership between TRM and DOES 1-20 (collectively “Defendants”) that the
15 individuality and separateness of defendants have ceased to exist.

16 25. Class Plaintiffs are informed and believe, and based thereon allege, that despite the
17 formation of purported corporate existence, TRM and DOES 1-20 are, in reality, one and the same as
18 TRM, including, but not limited to because:

19 a. TRM is completely dominated and controlled by DOES 1-20, who personally
20 committed the frauds and violated the laws as set forth in this complaint, and who have hidden and
21 currently hide behind TRM to perpetrate frauds, circumvent statutes, or accomplish some other wrongful
22 or inequitable purpose.

23 b. DOES 1-20 derive actual and significant monetary benefits by and through TRM’s
24 unlawful conduct, and by using TRM as the funding source for their own personal expenditures.

25 c. TRM and DOES 1-20, while really one and the same, were segregated to appear
26 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
27 accomplishing some other wrongful or inequitable purpose.

1 d. TRM does not comply with all requisite corporate formalities to maintain a legal
2 and separate corporate existence.

3 e. The business affairs of TRM and DOES 1-20 are, and at all times relevant were,
4 so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable
5 confusion. TRM is, and at all times relevant hereto was, used by DOES 1-20 as a mere shell and conduit
6 for the conduct of certain of TRM's affairs, and is, and was, the alter ego of DOES 1-20. The recognition
7 of the separate existence of TRM would not promote justice, in that it would permit TRM to insulate
8 themselves from liability to Plaintiffs for violations of the Government Code, Labor Code, Business and
9 Professions Code and other statutory violations. The corporate existence TRM and DOES 1-20 should
10 be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
11 and injustice to Plaintiff herein.

12 26. Accordingly, TRM constitutes the alter ego of DOES 1-20, and the fiction of their separate
13 corporate existence must be disregarded.

14 27. As a result of the aforementioned facts, Class Plaintiffs are informed and believe, and
15 based thereon allege, that TRM and DOES 1-20 are Class Plaintiffs' joint employers by virtue of a joint
16 enterprise, and that Class Plaintiffs were employees of TRM and DOES 1-20. Class Plaintiffs performed
17 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
18 Defendants shared control of the responsibility and influence of Class Plaintiffs as employees, either
19 directly or indirectly, and the manner in which TRM's business was and is conducted.

20 28. Alternatively, Class Plaintiffs are informed and believe and, based thereupon allege, that
21 as and between DOES 1-20 and TRM, (1) there is an express or implied agreement of assumption
22 pursuant to which DOES 1-20 agreed to be liable for the debts of TRM, (2) the transaction between
23 DOES 1-20 and TRM amounts to a consolidation or merger of entities, (3) DOES 1-20 is a mere
24 continuation of TRM, or (4) the transfer of assets to DOES 1-20 is for the fraudulent purpose of escaping
25 liability for TRM's debts. Accordingly, DOES 1-20 are the successors of TRM, and are liable on that
26 basis.

CLASS ACTION ALLEGATIONS

29. The Class Plaintiffs are entitled to the protections of the California Labor Code and the Wage Order. The Class Plaintiffs were not permitted to take duty-free rest periods of at least ten minutes every four hours worked, as required by California law. Class Plaintiffs were also not provided duty-free meal periods of at least thirty minutes every five hours worked.

30. Defendants failed to maintain working conditions that comply with the Wage Order, failed to timely provide them with accurate written wage statements, and failed to timely pay them earned wages during employment and upon discharge.

31. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a class action pursuant to CCP §382.

32. The putative classes that Class Plaintiffs will seek to certify are Defendants' similarly situated individual who are presently employed or were formerly employed as employees paid on an hourly basis (including any of Defendants' job positions with substantially similar titles and/or duties) in California in the four years prior to the filing of the original complaint herein and through trial who were not: (1) provided legally compliant meal periods, (2) provided legally compliant rest periods, (3) provided accurate wage statements, or (4) paid all earned wages timely upon termination of their employment.

33. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Class Plaintiff will formally define and designate a class definition at such time when Class Plaintiffs seek to certify the Classes alleged herein.

34. Numerosity (CCP §382):

- a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;
- b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;

- c. The quantity of members of the Classes is unknown to Class Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and
- d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

35. Superiority (CCP §382): The nature of this action and the nature of the laws available to Class Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Class Plaintiffs for the wrongs alleged herein, as follows:

- a. California has a public policy which encourages the use of the class action device;
- b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;
- c. This case involves large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;
- d. If each individual member of the Classes were required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;
- e. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being;
- f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;

- 1 g. Absent class treatment, the prosecution of separate actions by the individual members
2 of the Classes, even if possible, would likely create:
- 3 i) a substantial risk of each individual plaintiff presenting in separate,
4 duplicative proceedings the same or essentially similar arguments and
5 evidence, including expert testimony;
 - 6 ii) a multiplicity of trials conducted at enormous expense to both the judicial
7 system and the litigants;
 - 8 iii) inconsistent or varying verdicts or adjudications with respect to the
9 individual members of the Classes against Defendants;
 - 10 iv) potentially incompatible standards of conduct for Defendants; and
 - 11 v) potentially incompatible legal determinations with respect to individual
12 members of the Classes which would, as a practical matter, be dispositive
13 of the interest of the other members of the Classes who are not parties to
14 the adjudications or which would substantially impair or impede the ability
15 of the members of the Classes to protect their interests.
- 16 h. The claims of the individual members of the Classes are not sufficiently large to
17 warrant vigorous individual prosecution considering all of the concomitant costs and
18 expenses attendant thereto;
- 19 i. Courts seeking to preserve efficiency and other benefits of class actions routinely
20 fashion methods to manage any individual questions; and
- 21 j. The Supreme Court of California urges trial courts, which have an obligation to
22 consider the use of innovative procedural tools to certify a manageable class, to be
23 procedurally innovative in managing class actions.

24 36. Well-defined Community of Interest: Class Plaintiffs also meet the established standards
25 for class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as
26 follows:

- 27 a. Typicality: The claims of Plaintiff ARDILES are typical of the claims of all members
28 of the Classes he seeks to represent because he has been subject to all the violations

described herein, as have all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

b. Adequacy: Plaintiff ARDILES:

- i) is an adequate representative of the Classes he seeks to represent;
- ii) will fairly protect the interests of the members of the Classes;
- iii) has no interests antagonistic to the member of the Classes; and
- iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:

- i) Whether Defendants failed and continue to fail to authorize and permit legally-requisite rest breaks to members of the Rest Period Class in violation of the Labor code and the Wage Order;
- ii) Whether Defendants failed and continue to fail to authorize and permit legally-requisite meal periods to the members of the Meal Period Class in violation of the Labor Code and the Wage Order;
- iii) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to Class Plaintiffs;
- iv) Whether Defendants are derivatively liable pursuant to Labor Code §203 to Class Plaintiffs;
- v) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent competition within the meaning of B&PC §17200, et seq.;
- vi) Whether Defendants' conduct constitutes unfair, illegal, or fraudulent business practices within the meaning of B&PC § 17200, et seq.;

- 1 vii) Whether the members of the Classes are entitled to compensatory damages,
2 and if so, the means of measuring such damages;
3 viii) Whether the members of the Classes are entitled to injunctive relief;
4 ix) Whether the members of the Classes are entitled to restitution; and
5 x) Whether Defendants are liable for attorneys' fees and costs.

6 37. Whether each member of the Classes might be required to ultimately justify an individual
7 claim does not preclude maintenance of a class action (see, e.g. *Collins v. Rocha* (1972) 7 Ca1.3d 232,
8 238).

9 **FIRST CAUSE OF ACTION**
10 **FOR FAILURE TO PAY WAGES DUE**
11 **LABOR CODE §§201, 226.7, 512, 1194**
12 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
13 **AGAINST ALL DEFENDANTS**

14 38. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
15 forth in full herein.

16 39. At all relevant times, Defendants failed and refused to pay Class Plaintiffs wages earned
17 and required by 8 Code of Regulations §11010, as set forth hereinabove. As alleged herein, Defendants
18 routinely failed to pay Class Plaintiffs the correct compensation for missed rest and meal breaks.

19 40. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code
20 §510, 8 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

21 41. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct and
22 proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are entitled
23 to recover such amounts, plus interest thereon, attorneys' fees and costs.

SECOND CAUSE OF ACTION
FOR FAILURE TO AUTHORIZE AND PERMIT REST BREAKS
LABOR CODE §§226.7, 516
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

42. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

43. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion thereof, and further prohibits an employer from requiring “an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

44. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.”

45. Section 12(A) of the IWC Wage Order(s) states: “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 a 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 (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

46. Section 12(B) of the IWC Wage Order(s) states: “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 workday that the rest period is not provided.”

47. The Class Plaintiffs sometimes worked over 4 hours per shit.

1 48. The Class Plaintiffs were entitled to a rest period of not less than 10 minutes prior to
2 exceeding 4 hours of employment.

3 49. As a matter of Defendants' established company policy, Defendants failed to always
4 authorize and permit all required rest periods established by Labor Code §226.7 and Labor Code §516
5 and Section 12 of the IWC Wage Order(s).

6 50. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b) which states
7 "if an employer fails to provide an employee a meal or rest period in accordance with an applicable order
8 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay
9 at the employee's regular rate of compensation for each work day that the meal or rest period is not
10 provided," the Class Plaintiffs are entitled to damages in an amount equal to 1 additional hour of pay at
11 each employee's regular rate of compensation for each work day that the rest period was not provided.

12 51. Pursuant to Labor Code §218.6 and Civil Code § 3287, the Class Plaintiffs seek recovery
13 for prejudgment interest on all amounts recovered herein.

14
15 **THIRD CAUSE OF ACTION**
16 **FOR FAILURE TO AUTHORIZE AND PERMIT MEAL BREAKS**
17 **LABOR CODE §§226.7, 512**
18 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
19 **AGAINST ALL DEFENDANTS**

20 52. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
21 forth in full herein.

22 53. Labor Code §512 requires employers to provide every employee with an uninterrupted
23 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

24 54. Class Plaintiffs regularly worked in excess of five hours per day and were thereby entitled
25 to take uninterrupted 30-minute meal periods on each day of work.

26 55. Defendants failed and refused to provide the Class Plaintiffs with uninterrupted meal and
27 rest periods, and failed to compensate Class Plaintiffs for missed meal and rest periods, as required by
28

1 Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11010 and Industrial Welfare
2 Commission Order No. 1-2001, as follows.

3 56. Class Plaintiffs have been deprived of wages for missed meal breaks due in amounts to be
4 determined at trial.

5 57. As alleged herein, Class Plaintiffs are not exempt from the meal break requirements of 8
6 Code of Regulations §11010 and Industrial Welfare Commission Order No. 1-2001. Consequently, Class
7 Plaintiffs are owed one hour of pay at his or her then regular hourly rate, or the requisite minimum wage,
8 whichever is greater, for each day that he or he was denied such meal periods.

9 58. Class Plaintiffs have been deprived of his or her rightfully earned compensation for missed
10 meal breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

11 59. Thus, for the entirety of the time periods set forth above, Class Plaintiffs are entitled to
12 recover such amounts to be determined at trial pursuant to Labor Code §226.7(b), plus interest thereon
13 and costs of suit.

14
15 **FOURTH CAUSE OF ACTION**
16 **FOR FAILURE TO TIMELY FURNISH ACURATE ITEMIZED WAGE STATEMENTS**
17 **LABOR CODE §§226**
18 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
19 **AGAINST ALL DEFENDANTS**

20 60. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
21 forth in full herein.

22 61. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the
23 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
24 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
25 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
26 worked by the employee ... (4) all deductions ... (5) net wages earned, (6) the inclusive dates of the period
27 for which the employee is paid ... (8) the name and address of the legal entity that is the employer, and
28

1 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee”

3 62. Further, the IWC Wage Orders §12(A) states in pertinent part: “(A) Every employer shall
4 keep accurate information with respect to each employee including the following: (3) Time records
5 showing when the employee begins and ends each work period. Meal periods, split shift intervals, and
6 total daily hours worked shall also be recorded ... (5) Total hours worked in the payroll period and
7 applicable rates of pay”

8 63. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §12(A), California
9 employers are required to maintain accurate records pertaining to the total hours worked for Defendants
10 by Class Plaintiffs, including but not limited to, beginning and ending of each work period, meal period
11 and split shift interval, the total daily hours worked, and the total hours worked per pay period and
12 applicable rates of pay.

13 64. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders
14 §12(A), Defendants did not and still do not furnish each of the Class Plaintiffs with an accurate itemized
15 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all
16 deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective
17 pay period and the corresponding number of hours worked at each hourly rate by each respective
18 individual and/or pertaining to the total hours worked for Defendants by the Class Plaintiffs, including
19 but not limited to, beginning and ending of each work period, meal period and split shift interval, the
20 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

21 65. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an employee
22 suffers injury if the employer fails to provide accurate and complete information as required by any one
23 or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot promptly and easily ascertain
24 requisite information without reference to other documents or information.

25 66. Here, the Class Plaintiffs suffered injury because Defendants failed to provide accurate
26 and complete information as required by one or more items listed in Labor Code §226(a)(1)-(9) and the
27 Class Plaintiffs could not and cannot promptly and easily ascertain requisite information without
28 reference to other documents or information.

1 67. In addition, the Class Plaintiffs have suffered injury as a result of Defendants' failure to
2 maintain accurate records for the Class Plaintiffs in that the Class Plaintiffs were not timely provided
3 written accurate itemized statements showing all requisite information, including but not limited to total
4 hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code
6 §226 and the IWC Wage Orders §12(A), such that the Class Plaintiffs were misled by Defendants as to
7 the correct information regarding various items, including but not limited to total hours worked by the
8 employee, net wages earned and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate.

10 68. The actual injuries suffered by the Class Plaintiffs as a result of Defendants' knowing and
11 intentional failure to maintain accurate records for the Class Plaintiffs include but are not limited to:

- 12 a. Confusion over whether they received all wages owed them by Defendants;
- 13 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 14 c. Being forced to engage in mathematical computations to analyze whether Defendants'
15 wages in fact compensated for all hours worked;
- 16 d. The inability to accurately calculate wage rates complicated by the fact that wage
17 statement information required by Labor Code §226 is missing;
- 18 e. That such practice prevents the Class Plaintiffs from being able to effectively
19 challenge information on their wage statements; and/or
- 20 f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery
21 required to collect and analyze the very information that California law requires.

22 69. Pursuant to Labor Code §226(e), the Class Plaintiffs are entitled to actual damages or four
23 thousand dollars (\$4,000.00), whichever is greater.

24 70. Pursuant to Labor Code §226(g), the currently-employed Class Plaintiffs are entitled to
25 injunctive relief to ensure Defendants' compliance with Labor Code §226.

26 71. Pursuant to Labor Code §226(e) and/or §226(g), the Class Plaintiffs are also entitled to an
27 award of costs and reasonable attorneys' fees.
28

FIFTH CAUSE OF ACTION
FOR DERIVATIVE VIOLATIONS OF LABOR CODE §203
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

72. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

73. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

74. Some members of Class Plaintiffs are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

75. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

76. As set forth above, Defendants willfully failed to pay some members of the Class Plaintiffs their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

77. Defendants' willful failure to pay wages to some members of the Class Plaintiffs violates Labor Code §203 because Defendants knew or should have known wages were due to some members of the Class Plaintiffs, as set forth above, but Defendants failed to pay them.

78. Thus, some members of the Class Plaintiffs are entitled to recovery pursuant to Labor Code §203, as well as attorneys' fees and costs.

SIXTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
(ON BEHALF OF THE CLASS PLAINTIFFS)
AGAINST ALL DEFENDANTS

79. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

80. B&PC §17200 provides in pertinent part “[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act...”

81. B&PC §17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties available under all other laws of this state.”

82. B&PC §17204 provides that an action for relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

83. Defendants’ have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving Plaintiffs of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

84. Defendants have engaged in unfair business practices in California by practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

85. Defendants’ use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants’ competitors.

86. Class Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

1 87. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to
2 restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair
3 practices complained of herein.

4 88. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will
5 continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

6 89. Therefore, Class Plaintiffs request that the Court issue a preliminary and permanent
7 injunction prohibiting Defendants from engaging in the foregoing conduct.

8 90. Class Plaintiffs seek the appointment of a receiver, as necessary, to establish the total
9 monetary relief sought from Defendants.

10
11 **SEVENTH CAUSE OF ACTION**
12 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**
13 **LABOR CODE §2699**
14 **(ON BEHALF OF THE CLASS PLAINTIFFS)**
15 **AGAINST ALL DEFENDANTS**

16 91. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set
17 forth in full herein.

18 92. Under Labor Code §2699, Class Plaintiffs, as aggrieved employees, may bring an action
19 against Defendants, on behalf of herself and other current or former employees, seeking statutory civil
20 penalties for Defendants' violations of the California Labor Code.

21 93. Class Plaintiffs were aggrieved employees within the meaning of Labor Code §2699(a)
22 and 2699.3(a), as Defendants have committed multiple California Labor Code violations against him, as
23 previously pleaded in this Complaint.

24 94. On July 21, 2022, more than 60 calendar days before filing this Complaint, Class Plaintiffs
25 provided written notice by online filing to the Labor and Workforce Development Agency and to
26 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
27 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201,
28

202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

95. The “Aggrieved Employees” are those non-exempt employees who worked for Defendants within the State of California from March 14, 2022 through the present.

96. Under Labor Code §2699.3(c)(2)(A), Defendants may cure alleged violations within 33 calendar days of the postmarked date of the written notice sent by Class Plaintiffs. As of the filing of this Complaint, Defendants have not cured such violations within the specified time period. Consequently, Class Plaintiffs may now commence a civil action, pursuant to Labor Code §2699.3

97. As of the filing of this Complaint, Class Plaintiffs have not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Class Plaintiffs may now commence a civil action, pursuant to Labor Code §2699.3.

98. As a direct and proximate result of Defendants’ California Labor Code violations as set forth in this Complaint, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§201, 226, 226.3, 246.5, and 558.

99. Class Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one year period before Class Plaintiffs filed Notice with the LWDA of the intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the Labor and Workforce Development Agency. Class Plaintiffs are also entitled to reasonable attorney’s fees and costs, and 25% of the recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i). This claim under Labor Code §2699 and §2699.3 et seq., does not require class certification as it is brought pursuant to the Private Attorneys General Act.

1
2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Class Plaintiffs pray:

4 1. That the Court issue an Order certifying the Classes herein, appointing Plaintiff
5 ARDILES as representative of all others similarly situated, and appointing the law firm(s) representing
6 the named Plaintiff ARDILES as counsel for the Class Plaintiffs;

7 As to the First Cause of Action for Failure to Pay Wages:

- 8 a. For recovery of the unpaid balance of the full amount of wages due and owing, according
9 to proof;
10 b. For prejudgment interest as allowed by Labor Code §§201, 226.7, 512, 558, 1182.12, 1194,
11 1194.2;
12 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or
13 Labor Code §1194(a);

14 As to the Second Cause of Action for Failure to Authorize and Permit Rest Periods:

- 15 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid
16 Rest Period Class for each workday that a paid rest period was not provided
17 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287;

18 As to the Third Cause of Action for Failure to Authorize and Permit Meal Periods:

- 19 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid
20 Meal Period Class for each workday that a meal period was not provided;
21 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287

22 As to the Fourth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements:

- 23 a. For damages according to proof;
24 b. For recovery as authorized by Labor Code §226(e) and 226.3;
25 c. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or
26 §226(g);

27 As to the Fifth Cause of Action for Derivative Violations of Labor Code §203:

- 28 a. For recovery as authorized by Labor Code §203;

- 1 b. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §203 and/or
2 Labor Code §1194(a);

3 As to the Sixth Cause of Action for Unfair Business Practices:

- 4 a. For an accounting, under the administration of Plaintiff and/or the receiver and subject to
5 Court review, to determine the amount to be returned by Defendants, and the amounts to be
6 refunded to members of the Classes who are owed monies by Defendants;
- 7 b. For an Order requiring Defendants to identify each of the members of the Classes by name,
8 home address, home telephone number and, if available, email address;
- 9 c. For an Order requiring Defendants to make full restitution and payment pursuant to
10 California law;
- 11 d. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from
12 engaging in the acts complained of herein;
- 13 e. For all other appropriate injunctive, declaratory and equitable relief;
- 14 f. For interest to the extent permitted by law;
- 15 g. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution
16 of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code §1194 and/or
17 any other applicable provision of law;

18 As to the Seventh Cause of Action for Derivative Violations of Labor Code §2699:

- 19 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent
20 and apart from other penalties in the Labor Code and for Labor Code violations without a
21 specific penalty, in the amount of \$100 for each aggrieved employee per pay period for each
22 violation, and \$200 for each aggrieved employee per pay period for each subsequent
23 violation;
- 24 b. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent and
25 apart from other penalties in the Labor code, as follows: (i) For any violation, fifty dollars
26 (\$50) for each aggrieved underpaid employee for each pay period for the the employee was
27 underpaid, and an additional penalty amount sufficient to recover underpaid wages; (ii) For
28 each subsequent violation, one hundred dollars (\$100) for each aggrieved underpaid

1 employee for each pay period for which the employee was underpaid, and an additiona
2 penalty amount sufficient to recover the underpaid wages; and (iii) for these amounts to be
3 paid to the aggrieved employees;

- 4 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §2699(g)(1)
5 and any other applicable statute;

6 As to All Causes of Action:

- 7 a. For such relief as this Court may deem just and proper, including reasonable attorneys' fees
8 and costs incurred.

9 DATED: October 20, 2023

LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION

12 By: _____

Ramin R. Younessi, Esq.
Attorney for Plaintiff
RAUL YANEZ ARDILES, on behalf of all
others similarly situated, and also on behalf of
all aggrieved employees

16 **JURY TRIAL DEMANDED**

17 Plaintiff demands trial of all issues by jury.

19 DATED: October 20, 2023

LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION

21 By: _____

Ramin R. Younessi, Esq.
Attorney for Plaintiff
RAUL YANEZ ARDILES, on behalf of all
others similarly situated, and also on behalf of
all aggrieved employees

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1520 2nd Street, Penthouse, Santa Monica, California 90401.

On January 24, 2024, I served the foregoing document described as **AMENDED COMPLAINT** on the interested parties in this action as follows:

☒ By placing true copies enclosed in a sealed envelope addressed to each addressee as follows:

Ashton Riley, Esq.

John Mavros, Esq.

Laura Lane

Grace Andrade

Email: ariley@fisherphillips.com

jmavros@fisherphillips.com

llane@fisherphillips.com

gandrade@fisherphillips.com

FISHER & PHILLIPS LLP

Attorneys for Defendant

☒ BY ELECTRONIC MAIL: Pursuant to Code of Civil Procedure §§ 1010.6(a)(2), 1010.6(e), and 1013(g), and/or California Rules of Court 2.251(b)(1)-(2), I transmitted a copy of the aforementioned document to each addressee above to the email address(es) indicated.

Executed on January 24, 2024, at Los Angeles, California.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ FEDERAL I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Elizabeth Pineda

