

1 Daniel A. Menendez, Esq. (SBN 260822)
2 LAW OFFICE OF DANIEL A. MENENDEZ
3 1261 Lincoln Avenue, Suite 208
4 San Jose, California 95125
5 T: 408.479.4969
6 F: 408.273.6912
7 daniel@siliconvalleylegal.com

8 Attorney for Plaintiff
9 DANIEL MARTINEZ

E-FILED
11/16/2022 8:29 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV407571
Reviewed By: N. Christopherson

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

DANIEL MARTINEZ, an individual;

Plaintiff

vs.

PEAK TECHNOLOGY INTERNATIONAL,
INC., a California corporation; ZAMUDIO
NGUYEN, an individual;
and
DOES 1 through 20, inclusive,

Defendants.

Case No.: 22CV407571

**COMPLAINT FOR DAMAGES AND
OTHER RELIEF**

**DEMAND FOR JURY TRIAL
(UNLIMITED CIVIL)**

1 Plaintiff DANIEL MARTINEZ is informed and believes and thereon alleges:

2 **PARTIES**

3 1. Plaintiff DANIEL MARTINEZ (“PLAINTIFF”), an individual, is a competent adult.

4 2. PLAINTIFF, at all times relevant as alleged herein, was a resident of the County of
5 Santa Clara and employee of defendants: PEAK TECHNOLOGY INTERNATIONAL, INC. a
6 California corporation doing business as “Peak Precision”; ZAMUDIO NGUYEN, an
7 individual; and DOES 1 through 20, inclusive (collectively “DEFENDANTS”).

8 3. Defendant PEAK TECHNOLOGY INTERNATIONAL, INC. (“PEAK
9 TECHNOLOGY”), is and at all relevant times hereto was, a California corporation operating
10 under the laws of the State of California. PEAK TECH operates a metal machining and
11 fabrication factory throughout the County of Santa Clara and at all times relevant out of 645
12 Vista Way, Milpitas, California 95035.

13 4. Defendant ZAMUDIO NGUYEN (“NGUYEN”), on information and belief, is and at all
14 relevant times hereto was, the owner and operator of PEAK TECHNOLOGY, operating
15 primarily out of 645 Vista Way, Milpitas, California 95035.

16 5. PLAINTIFF is informed and believes and thereon allege there exists, at all times
17 mentioned herein, ownership interest between all DEFENDANTS, such any individuality and
18 separateness among DEFENDANTS, and each of them, has ceased, and all were joint
19 employers of PLAINTIFF.

20 6. PLAINTIFF is informed and believes and thereon alleges DEFENDANTS are
21 corporations, entities, and/or individuals authorized to conduct business, conducting regular and
22 continuous business transactions, and employing individuals in and existing under the laws of
23 the State of California. DEFENDANTS own and operate establishments within the State of
24 California, specifically out of the County of Santa Clara. DEFENDANTS gave PLAINTIFF
25 work assignments from their primary work location of 645 Vista Way, Milpitas, California
26 95035.

1 7. PLAINTIFF is ignorant as to the true names and/or capacities of the persons named as
2 DOES 1 through 20, inclusive, and therefore sues them by such fictitious names. PLAINTIFF
3 will amend this Complaint to assert the true names and capacities when ascertained. Except as
4 otherwise alleged herein, PLAINTIFF is informed and believes, and thereon alleges, each of the
5 defendants sued as DOES 1 through 20, inclusive, is legally responsible for the damages caused
6 to PLAINTIFF as alleged herein.

7 8. Whenever in this complaint reference is made to any act or omission of DEFENDANTS,
8 such act or omission shall be deemed the act or omission of each defendant, acting individually,
9 jointly, and severally.

10 9. Whenever in this complaint reference is made to any act or omission of a corporate
11 defendant, such allegation shall be deemed to mean that corporate defendant, its officers,
12 directors, agents, employees, and representatives did or authorized such act or omission while
13 actively engaged in the management, direction and control of the affairs of that corporate
14 defendant, and while acting within the course and scope of their agency and employment.

15 **JURISDICTION AND VENUE**

16 10. The monetary value of PLAINTIFF's claims exceeds \$25,000.

17 11. The amount in controversy herein is within the jurisdiction of this Court.

18 12. PLAINTIFF alleges on information and belief DEFENDANTS were and are companies,
19 entities, and individuals authorized to conduct and conducting substantial, systematic, and
20 continuous business transactions in the County of Santa Clara.

21 13. The acts, omissions, damages and injury that form the basis of this lawsuit were
22 sustained in the County of Santa Clara.

23 **FACTUAL ALLEGATIONS**

24 14. DEFENDANTS employed PLANTIFF as a non-exempt quality control employee from
25 approximately September 18, 2017 through January 13, 2022. PLAINTIFF's employment
26 began with an hourly wage of \$19.00. On or about June 21, 2018, DEFENDANTS granted
27 PLAINTIFF the title of "Shipping Manager" and raise to \$21.00 per hour. On our about May
28

1 17, 2019, DEFENDANTS granted PLAINTIFF the title of “Inspector II” and raise to \$25.00 per
2 hour. PLAINTIFF’s final hourly wage was \$35.00 at separation of employment.

3 15. DEFENDANTS operate a CNC and sheet metal fabrication facility that works with a
4 variety of materials.

5 16. PLAINTIFF’s daily duties included, but were not limited to: calibration and operation of
6 machinery, inspection of products, and other duties as assigned.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY ALL WAGES OWED**

9 **(Labor Code Secs. 510, 1194, 1194.2, 1197, 1198; IWC Wage Orders)**

10 **(Against all DEFENDANTS)**

11 17. PLAINTIFF herein incorporates by reference the foregoing paragraphs.

12 18. At all relevant times, DEFENDANTS were aware of, and under a duty to comply with,
13 the provisions of the Labor Code including, but not limited to, Labor Code sections 510, 1194,
14 1197, and 1198.

15 19. Labor Code Section 510, in pertinent part, provides: “Any work in excess of eight hours
16 in one workday and any work in excess of 40 hours in any one workweek...shall be
17 compensated at the rate of no less than one and one-half times the regular rate of pay for any
18 employee...”

19 20. Labor Code Section 1194(a), in pertinent part, provides:

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

23 21. Labor Code Section 1194.2(a), in pertinent part, provides:

24 In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages
25 because of the payment of a wage less than the minimum wage fixed by an order
26 of the commission or by statute, an employee shall be entitled to recover
27 liquidated damages in an amount equal to the wages unlawfully unpaid and
28 interest thereon. Nothing in this subdivision shall be construed to authorize the
recovery of liquidated damages for failure to pay overtime compensation. A suit
may be filed for liquidated damages at any time before the expiration of the
statute of limitations on an action for wages from which the liquidated damages

arise.

1 22. Labor Code Section 1197 provides: “The minimum wage for employees fixed by the
2 commission is the minimum wage to be paid to employees, and the payment of a less wage than
3 the minimum so fixed is unlawful.”

4 23. Labor Code Section 1198, in pertinent part, provides: “The maximum amount hours of
5 work and the standard conditions of labor fixed by the commission shall be the maximum hours
6 of work and the standard conditions of labor for employees. The employment of any employee
7 for longer hours than those fixed by the order or under conditions of labor prohibited by the
8 order is unlawful.”

9 24. PLAINTIFF often worked more than eight (8) hours in a workday throughout
10 employment with DEFENDANTS. PLAINTIFF often worked more than 40 hours in a
11 workweek throughout employment with DEFENDANTS.

12 25. DEFENDANTS refused and/or failed to compensate PLAINTIFFS for all of the wages
13 earned, including minimum and overtime wages, in violation of the applicable IWC Wage
14 Order, and provisions of the California Labor Code.

15 26. DEFENDANTS required PLAINTIFF to be present and under DEFENDANTS’ control
16 beyond paid hours to perform assigned duties. DEFENDANTS failed to pay PLAINTIFF
17 compensation for all time spent under DEFENDANTS’s control and performing work,
18 including applicable overtime premiums.

19 27. By refusing to compensate PLAINTIFF for minimum, and overtime wages earned,
20 DEFENDANTS violated those Labor Code provisions cited herein as well as the applicable
21 IWC Wage Order(s).

22 28. As a direct and proximate result of DEFENDANTS’ unlawful conduct, as set forth
23 herein, PLAINTIFF sustained damages, including loss of earnings, in an amount to be
24 established at trial, and are entitled to recover attorneys’ fees and costs of suit.

25 Wherefore, PLAINTIFF prays for judgment as set forth below.
26
27
28

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code Secs. 226.7, 512, 1198; IWC Wage Orders)

(Against all DEFENDANTS)

29. PLAINTIFF herein incorporates by reference the foregoing paragraphs.

30. Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of meal periods to non-exempt employees in California. The applicable wage order indicates that “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

Furthermore, the wage order indicates that “an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

31. Labor Code Section 512(a) and applicable California Wage Orders set for the minimum requirements for the provision of rest breaks to non-exempt employees in California. The applicable wage order indicates that “[e]very 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.”

1 32. Labor Code Section 226.7 provides that no employer shall require any employee to work
2 during any meal or rest period mandated by an applicable Wage Order. If an employer fails to
3 provide an employee a meal or rest period in accordance with the applicable provisions of the
4 wage order, the employer shall pay the employee one (1) hour of pay at the employee's regular
5 rate of compensation for each workday that the meal or rest period is not provided.

6 33. Pursuant to the above provisions, PLAINTIFF was entitled to meal periods in which she
7 was relieved of all job duties or compensation at the rate of one (1) hour of pay at the
8 employee's regular rate of compensation for each workday the meal period was not provided,
9 and to a net 10 minute rest period for every four hours worked or major fraction thereof, or
10 compensation at the rate of one (1) hour of pay at the employee's regular rate of compensation
11 for each workday the rest period was not provided.

12 34. DEFENDANTS required PLAINTIFF to work without receiving timely meal periods
13 and rest breaks to which PLAINTIFF was entitled.

14 35. DEFENDANTS required PLAINTIFF work shifts in excess of five (5) hours without an
15 opportunity for PLAINTIFF to receive meal periods as required under the applicable Wage
16 Order. DEFENDANTS's instruction was to work the shift without a meal period. PLAINTIFF's
17 supervisors failed to schedule meal periods for PLAINTIFF. DEFENDANTS failed to schedule
18 relief for shifts worked by PLAINTIFF and prohibited PLAINTIFF from not performing his job
19 duties to take meal periods. PLAINTIFF never waived, nor was provided with an opportunity to
20 take, meal periods as required by law.

21 36. DEFENDANTS required PLAINTIFF work shifts in excess of four (4) hours without
22 the authorization or permission to take rest periods. DEFENDANTS's instruction was to work
23 the shift without a rest period. PLAINTIFF's supervisors failed to schedule rest periods for
24 PLAINTIFF. DEFENDANTS failed to schedule additional employees for shifts worked by
25 PLAINTIFF and prohibited PLAINTIFF from closing DEFENDANTS's business or stop
26 working to take rest periods. PLAINTIFF never waived, nor was authorized or permitted to
27 take, rest periods as required by law.

1 37. On occasions where DEFENDANTS required PLAINTIFF to work without receiving
2 timely meal periods and rest breaks, DEFENDANTS failed to compensate PLAINTIFF as
3 required by law.

4 38. Due to DEFENDANTS' failure to provide timely, off-duty meal and rest periods as
5 required by law, PLAINTIFF is entitled to recover unpaid wages, in an amount to be proven at
6 trial.

7 Wherefore, PLAINTIFF prays for judgment as set forth below.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY WAGES ON SEPARATION**

10 **(Violation of California Labor Code Section 203)**

11 **(Against all DEFENDANTS)**

12 39. PLAINTIFF incorporates herein by reference the foregoing paragraphs.

13 40. Labor Code Section 203, in pertinent part, provides that:

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
16 of an employee who is discharged or who quits, the wages of the
17 employee shall continue as a penalty from the due date thereof at the
same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.

18 41. DEFENDANTS failed to pay PLAINTIFF all due wages (including minimum wage and
19 premium overtime wages) due upon separation of employment. Said non-payment was the
20 direct and proximate result of a willful refusal to do so by DEFENDANTS.

21 42. To date, DEFENDANTS have not paid PLAINTIFF all due wages.

22 43. As a direct and proximate result of DEFENDANTS' willful conduct in failing to pay
23 PLAINTIFF for all hours worked, PLAINTIFF is entitled to recover "waiting time" penalties of
24 up to 30 days wages pursuant to Labor Code Section 203 in an amount to be established at trial,
25 together with interest thereon, and attorneys' fees and costs.

26 Wherefore, PLAINTIFF prays for judgment as set forth below.
27
28

FOURTH CAUSE OF ACTION
FAILURE TO MAINTAIN ACCURATE TIME RECORDS
(Violation of Labor Code Section 1198; IWC Wage Orders)
(Against all DEFENDANTS)

44. PLAINTIFF incorporates herein by reference the foregoing paragraphs.

45. Labor Code Section 1198, in pertinent part provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

46. The applicable wage order, in pertinent part, provides:

(A) Every employer shall keep accurate information with respect to each employee including the following: [...] (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. [...]

(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.

47. DEFENDANTS often failed to maintain accurate time records of all hours worked by PLAINTIFF.

48. DEFENDANTS knew they were required by law to maintain accurate time records of all hours worked and intentionally failed to maintain them for PLAINTIFF.

1 49. PLAINTIFF suffered injury from DEFENDANTS' failure to maintain accurate time
2 records.

3 50. PLAINTIFF could not determine the amount of wages earned or whether all wages due
4 had been paid. PLAINTIFFS must therefore go through the difficulty and bear the expense of
5 reconstructing all time and pay records to make computations to analyze the amounts of wages
6 due.

7 Wherefore, PLAINTIFF prays for judgment as set forth below.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 **(Labor Code Sec. 226)**

11 **(Against all DEFENDANTS)**

12 51. PLAINTIFF incorporate herein by reference the foregoing paragraphs.

13 52. During the relevant time period, since and including January 1, 2013, Labor Code
14 Section 226(a) provided and provides:

15 Every employer shall, semimonthly or at the time of each payment of
16 wages, furnish each of his or her employees, either as a detachable part
17 of the check, draft, or voucher paying the employee's wages, or
18 separately when wages are paid by personal check or cash, an accurate
19 itemized statement in writing showing (1) gross wages earned, (2) total
20 hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from
22 payment of overtime under subdivision (a) of Section 515 or any
23 applicable order of the Industrial Welfare Commission, (3) the number
24 of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis, (4) all deductions, provided that all
26 deductions made on written orders of the employee may be aggregated
27 and shown as one item, (5) net wages earned, (6) the inclusive dates of
28 the period for which the employee is paid, (7) the name of the
employee and only 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 and,
beginning July 1, 2013, if the employer is a temporary services
employer as defined in Section 201.3, the rate of pay and the total
hours worked for each temporary services assignment. The deductions
made from payment of wages shall be recorded in ink or other indelible

1 form, properly dated, showing the month, day, and year, and a copy of
2 the statement and the record of the deductions shall be kept on file by
3 the employer for at least three years at the place of employment or at a
4 central location within the State of California. For purposes of this
subdivision, "copy" includes a duplicate of the itemized statement
provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

5 53. Moreover, up to and including December 31, 2012, Labor Code Section 226(e)
6 provided:

7 An employee suffering injury as a result of a knowing and intentional
8 failure by an employer to comply with subdivision (a) is entitled to
9 recover the greater of all actual damages or fifty dollars (\$50) for the
10 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.

11 54. During the relevant time period, since and including January 1, 2013, Labor Code
12 Section 226(e)(1) provided and provides:

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

17 55. Furthermore, during the relevant time period, since and including January 1, 2013,
18 Labor Code Section 226(e)(2) provided and provides:

19 (A) An employee is deemed to suffer injury for purposes of this
subdivision if the employer fails to provide a wage statement.

20 (B) An employee is deemed to suffer injury for purposes of this
21 subdivision if the employer fails to provide accurate and
22 complete information as required by any one or more of items
(1) to (9), inclusive, of subdivision (a) and the employee cannot
promptly and easily determine from the wage statement alone
one or more of the following:

23 (i) The amount of the gross wages or net wages paid to the
24 employee during the pay period or any of the other
25 information required to be provided on the itemized
wage statement pursuant to items (2) to (4), inclusive,
(6), and (9) of subdivision (a).

26 (ii) Which deductions the employer made from gross wages
27 to determine the net wages paid to the employee during
the pay period. Nothing in this subdivision alters the
28 ability of the employer to aggregate deductions

- 1 consistent with the requirements of item (4) of
subdivision (a).
2 (iii) The name and address of the employer and, if the
3 employer is a farm labor contractor, as defined in
subdivision (b) of Section 1682, the name and address of
4 the legal entity that secured the services of the employer
during the pay period.
5 (iv) The name of the employee and only the last four digits
of his or her social security number or an employee
6 identification number other than a social security
number.

7 56. DEFENDANTS knew they were required by law to furnish accurate itemized statements
8 in writing and intentionally failed to furnish them to PLAINTIFF on the regular paydays.

9 57. DEFENDANTS have failed to provide timely, accurate itemized wage statements to
10 PLAINTIFF in accordance with Labor Code Section 226. PLAINTIFF was informed and
11 believes and, on that basis, alleges any statements provided by DEFENDANTS failed to
12 accurate reflect the lawful hourly rates applicable to, *inter alia*, training time, work-hours in
13 excess of eight (8) hours in a work-day and/or 40 hours in a work-week, and sick leave.

14 58. PLAINTIFF suffered injury from DEFENDANTS' failure to provide accurate itemized
15 statements in writing on the regular paydays. PLAINTIFF could not determine the amount of
16 wages earned or whether all wages due had been paid. PLAINTIFF must therefore go through
17 the difficulty and bear the expense of reconstructing all time and pay records to make
18 computations to analyze the amounts of wages due.

19 59. PLAINTIFF seeks to recover actual damages, costs, and attorneys' fees under these
20 provisions.

21 Wherefore, PLAINTIFF prays for judgment as set forth below.
22
23

24 [Rest of page intentionally blank]
25
26
27
28

1 **SIXTH CAUSE OF ACTION**

2 **RECOVERY UNDER PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

3 **(Labor Code Sec. 2698, *et seq.*)**

4 **(Against all DEFENDANTS)**

5 60. PLAINTIFF incorporates herein by reference the foregoing paragraphs.

6 61. PLAINTIFF, as an aggrieved employee, brings this claim under the Private Attorneys
7 General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all
8 other current or former employees employed by DEFENDANTS as non-exempt employees in
9 California at any time for which recovery is authorized under Labor Code section 2698-2699, *et*
10 *seq.* Pursuant to Labor Code Section 2699.3, PLAINTIFF sent notice by the Labor and
11 Workforce Development Agency (“LWDA”) via electronic submission of the specific
12 provisions of the Labor Code that have been violated, including the facts and theories to support
13 the violations. PLAINTIFF also sent a copy of the notice to DEFENDANTS via Certified Mail.
14 As of this filing, the LWDA has given no notice it will investigate PLAINTIFF’s claims.
15 PLAINTIFF has therefore complied with PAGA’s notice obligations.

16 62. As alleged above, DEFENDANTS have violated the provisions of the Labor
17 Code, including failure to properly pay minimum wage and overtime wages for all hours
18 worked, failure to pay wages owed in a timely manner, failure to provide accurate wage
19 statements, and failure to provide timely duty-free meal and rest periods or compensation for
20 meal and rest period violations. PLAINTIFF seeks recovery of damages resulting from said
21 violations on behalf of himself and all other current or former employees employed by
22 DEFENDANTS as non-exempt caretakers in California at any time for which recovery is
23 authorized under Labor Code sections 2698-2699.

24 63. Pursuant to Labor Code Section 2699, PLAINTIFF also seeks recovery of all
25 penalties for DEFENDANTS’s above-described violations of the Labor Code and Industrial
26 Welfare Commission Wage Orders that are available under PAGA. Such penalties for which
27 PLAINTIFF now seeks recovery include, but are not limited to, those set forth in Labor Code
28

1 sections 201-203 (failure to pay wages due in a timely manner to terminated or quitting
2 employees), 226 (failure to provide proper pay statements), 226.7 and 512 (failure to provide
3 meal and rest periods), 558 (for causing the labor code violations pled herein), and 1194 and
4 1197 (for failing to pay a minimum wage for all hours worked).

5 64. Labor Code Section 558.1, provides that an “employer,” and any “other person
6 acting on behalf of an employer, who violates, or causes to be violated” any of those wage
7 statutes may share liability. “Other person” is defined as “a natural person who is an owner,
8 director, officer, or managing agent.” PLAINTIFF is informed and believes, and upon such
9 information and belief, alleges that NGUYEN at all relevant times herein, acted as one of the
10 owners, directors, officers, and/or managing agents of PEAK PRECISION. PLAINTIFF further
11 alleges NGUYEN qualifies as “a person acting on behalf of an employer, who violates, or
12 causes to be violated” the provisions of the applicable IWC Wage Order and Labor Provisions,
13 as described herein (including but not limited to Labor Code Sections 203, 226, and 1194).
14 Accordingly, PLAINTIFF alleges NGUYEN should be held personally liable on this claim
15 pursuant to Labor Code Section 558.1.

16 65. PLAINTIFF requests an award of attorneys’ fees and costs, including as
17 authorized under California Labor Code Section 2699.

18 Wherefore, PLAINTIFF prays for judgment as set forth below.

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION LAW**

21 **(Business and Professions Code Sec. 17200 *et seq.*)**

22 **(Against all DEFENDANTS)**

23 66. PLAINTIFF incorporates herein by reference the foregoing paragraphs.

24 67. Business and Professions Code Section 17200, *et seq.* prohibits unfair competition in the
25 form of any unlawful, unfair, deceptive, or fraudulent business practices.

26 68. Beginning at an exact date unknown to PLAINTIFF, but continuing through separation
27 of employment, DEFENDANTS committed unlawful acts as defined by Business and
28

1 Professions Code Section 17200. DEFENDANTS's unlawful and unfair business practices
2 include, but are not necessarily limited to, violations of the requirements of Labor Code sections
3 201-204, 226, 226.7, 510, 512, 1194, 1197, 1198, 1198.5, *et seq.*, and the applicable Wage
4 Order.

5 69. The knowing conduct of DEFENDANTS, as alleged herein, constitutes an unlawful
6 and/or fraudulent business practice, as set forth in Business and Professions Code Sections
7 17200-17208. Specifically, DEFENDANTS conducted business activities while failing to
8 comply with the legal mandates herein.

9 70. DEFENDANTS's knowing failure to adopt policies in accordance with, and/or to adhere
10 to these laws, all of which are binding upon and burdensome on its competitors, engenders an
11 unfair competitive advantage for DEFENDANTS, thereby constituting an unfair business
12 practice, as set forth in Business and Professions Code Section 17208.

13 71. Business and Professions Code Section 17203 provides the Court may restore to any
14 person in interest any money or property which may have been acquired by means of such
15 unfair competition. As a direct and proximate result of the aforementioned acts, PLAINTIFF
16 was injured and suffered the loss of money in the amount of, inter alia, unpaid wages
17 PLAINTIFF was otherwise entitled to receive. PLAINTIFF is entitled to restitution pursuant to
18 Business and Professions Code sections 17203 and 17208 for all wages unlawfully withheld as
19 a result of DEFENDANTS's unlawful and unfair conduct.

20 72. PLAINTIFF's success in this action will enforce important rights affecting the public
21 interest. PLAINTIFF seeks, and was entitled to, injunctive relief as well as all other appropriate
22 equitable remedies. Injunctive relief is necessary and appropriate to prevent DEFENDANTS
23 from repeating the wrongful business practices alleged herein.

24 Wherefore, PLAINTIFF prays for judgment as set forth below.

25
26 [Rest of page intentionally blank]
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff further prays this Court:

1. For special and general damages according to proof;
2. Declare, adjudge, and decree Defendants violated the provisions of the Labor Code, Business and Professions Code, and applicable Industrial Welfare Commission Wage Order(s);
3. Award Plaintiff unpaid minimum and overtime wage compensation (pursuant to Labor Code sections 510, 1194);
4. Award Plaintiff “waiting time” penalties (pursuant to Labor Code Section 203);
5. Award Plaintiff actual damages or penalties for failure to provide accurate wage statements (pursuant to Labor Code Section 226);
6. Award Plaintiff liquidated damages (pursuant to Labor Code Section 1194.2(a));
7. Order Defendants to pay restitution to Plaintiff (pursuant to Business and Professions Code Section 17200, *et seq.*);
8. Enjoin Defendants, ordering them to cease and desist from unlawful activities in violation of California Business and Professions Code Section 17200, *et seq.*;
9. That the Court order Defendants pay penalties pursuant to the Private Attorneys General Act (pursuant to Labor Code sections 2698-2699, *et seq.*);
10. That the Court find Defendant Nguyen is personally liable to Plaintiff for the damages alleged herein as a joint employer of Plaintiff, alter ego of Defendant Peak Precision, and/or pursuant to Labor Code sections 558 and/or 558.1;
11. For all other Orders, findings and determinations identified and sought in this Complaint;
12. For reasonable attorneys’ fees and costs, pursuant to Labor Code sections 218.5, 226, 1194, 2699, *et seq.*, and/or Code of Civil Procedure Section 1021.5, and for a contingency fee enhancement beyond the lodestar in accordance with *Ketchum v. Moses* (2001) 24 Cal.4th 1122, and related authorities;

13. For pre-judgment and post-judgment interest as available by law;

and

14. For costs of suit and any and all such other relief as the Court deems just and proper.

Dated: November 16, 2022

Respectfully submitted,



Daniel A. Menendez
Attorney for Plaintiff
DANIEL MARTINEZ

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all issues triable.

Dated: November 16, 2022

Respectfully submitted,



Daniel A. Menendez
Attorney for Plaintiff
DANIEL MARTINEZ