

1 **MAYALL HURLEY P.C.**
2 **JOHN P. BRISCOE (SBN: 273690)**
3 jbriscoe@mayalllaw.com
4 **2453 Grand Canal Boulevard**
5 **Stockton, California 95207-8253**
6 **Telephone: (209) 477-3833**
7 **Facsimile: (209) 473-4818**

8 **Attorneys for Plaintiff Ernie Madrigal**

9 **SUPERIOR COURT OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF RIVERSIDE**

11 **ERNIE MADRIGAL, an individual,**

12 **Plaintiff,**

13 **vs.**

14 **SUNDOWN WINDOW TINT, INC.; and**
15 **DOES 1-100, inclusive,**

16 **Defendants.**

Case No.: CVRI 2203384

COMPLAINT FOR DAMAGES

1. **FAILURE TO PAY OVERTIME**
2. **FAILURE TO PAY MINIMUM WAGE**
3. **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
4. **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
5. **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
6. **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**

JURY TRIAL DEMANDED

17
18
19
20
21 Plaintiff Ernie Madrigal brings this action against Sundown Window Tint, Inc., a corporation
22 dba Sundown Window Tinting; and Does 1 through 100, for violations of the Labor Code.

23 **PARTIES**

24 1. Plaintiff Ernie Madrigal ("Madrigal" or "Plaintiff") was, at all times relevant herein,
25 employed in Riverside County, California, and was an "employee" as defined by the Labor Code and
26 the applicable California Industrial Wage Commission ("IWC") Order(s).
27
28

2. Sundown Window Tint, Inc. (“Sundown” or “Defendant”) is a California corporation formed under the laws of that state.

3. At all times relevant herein, Sundown has been an “employer” under the Labor Code and the applicable California Industrial Wage Commission (“IWC”) Order(s).

4. Sundown and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

VENUE AND JURY TRIAL DEMAND

7. Venue is proper in this court because the unlawful acts alleged herein took place in Riverside County, California and Plaintiff’s place of employment with Defendants was within Riverside County. Plaintiff hereby demands a jury trial.

///

///

GENERAL ALLEGATIONS

8. Madrigal was hired by Sundown in or around early 1991 as an installer in Riverside, California.

9. Sundown is a company which provides window tinting services for commercial properties, residential properties, and automobiles.

10. In or around 2008, Madrigal was given the position of Shop Manager. However, at all times during his employment, Madrigal spent the majority of his work time performing the duties of an installer—i.e., installing window tinting in commercial and residential properties, as well as automobiles.

11. At no time during Madrigal's employment did he fall within any applicable exemption to California laws mandating the payment of overtime wages.

12. Madrigal regularly worked in excess of eight hours in a workday and forty hours in a workweek.

13. However, Madrigal was not paid overtime wages as earned. Instead, Madrigal was paid for only 40 hours per workweek at his base hourly rate, regardless of how many hours he actually worked. (Madrigal was also paid commissions, but he was not covered by any Wage Order of the Industrial Welfare Commission that sets forth a "commissioned salesperson" exemption to California's overtime requirements.)

14. By paying Madrigal for only 40 hours per week, even though he typically worked more than that, Sundown also failed to pay Madrigal the minimum wage for all hours worked.

15. Consistent with the apparent fiction that Madrigal was exempt from overtime, Sundown also failed to provide him with paid ten-minute rest periods for every four hours worked, and with 30-minute meal periods for every workshift of more than five hours. Sundown also did not pay Madrigal an hour of pay at his regular rate of compensation for every rest and meal period that was not provided.

16. As set forth above, Madrigal was paid commissions in connection with his employment with Sundown. However, Sundown failed to incorporate the value of this commissions into his regular

1 rate of pay for purposes of calculating and paying sick hours. Instead, Sundown paid such wages at
2 only Madrigal's base hourly rate.

3 17. Despite the fact that Madrigal was paid commissions, he was not given a written
4 agreement related to the calculation and paying of commissions, in violation of Labor Code section
5 2751.

6 18. Because of the aforementioned Labor Code violations, the itemized wage statements
7 furnished to Madrigal did not accurately show the gross wages earned, total hours worked, net wages
8 earned, and all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate.

10 19. Upon cessation of Madrigal's employment (on or around May 18, 2022), Sundown
11 failed to pay him the full balance of unpaid wages, *supra*.

12 20. The foregoing list of misconduct is a partial list only and set forth by way of example.

13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PAY OVERTIME**
15 **(Lab. Code § 510 & 1198)**
Against Defendants

16 21. Plaintiff hereby realleges and incorporates by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 22. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday
20 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
21 seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-
22 half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
23 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any
24 work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
25 less than twice the regular rate of pay of an employee.

26 23. Pursuant to Labor Code section 1198, the maximum hours of work and standard
27 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
28

1 conditions of labor for employees and the employment of any employee for longer hours than those
2 fixed by the commission or under conditions of labor prohibited by the order is unlawful.

3 24. During the relevant time period, Plaintiff regularly worked overtime and doubletime.

4 25. During the relevant time period, Defendants intentionally and willfully failed to pay the
5 proper overtime/doubletime wages due to Plaintiff.

6 26. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
7 provided.

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGE**
10 **(Lab. Code, §§ 1182.12, 1197)**
11 **Against Defendants**

12 27. Plaintiff hereby realleges and incorporates by reference each and every allegation set
13 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
14 allegations of this cause of action.

15 28. The minimum wage for California employers with 26 or more employees, in 2020,
16 was \$13 per hour. In 2021, that minimum wage was \$14 per hour. (Lab. Code, § 1182.12, subd.
17 (b)(1).)

18 29. The minimum wage for California employers with 25 or fewer employees, in 2020,
19 was \$12 per hour. In 2021, that minimum wage was \$13 per hour. (Lab. Code, § 1182.12, subd.
20 (b)(2).)

21 30. Pursuant to California Labor Code section 1194(a), notwithstanding any agreement
22 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
24 balance of the full amount of this minimum wage or overtime compensation, including interest
25 thereon, reasonable attorney's fees, and costs of suit.

26 31. Pursuant to Labor Code section 1197, the minimum wage for employees fixed by
27 the commission is the minimum wage to be paid to employees, and the payment of a less wage that
28 the minimum so fixed is unlawful.

32. Labor Code section 1194.2 provides that in any action under section 1194 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

33. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
(Lab. Code, § 226.7)
Against Defendants

34. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

35. Labor Code section 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

36. Section 11 of the applicable IWC Wage Order provides:

“(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be

1 limited to the employees' immediate work area.

2 (B) Rest periods need not be authorized in limited circumstances when the disruption of
3 continuous operations would jeopardize the product or process of the work. However,
4 the employer shall make up the missed rest period within the same workday or
5 compensate the employee for the missed ten (10) minutes of rest time at his/her regular
6 rate of pay within the same pay period.

7 (C) A rest period need not be authorized for employees whose total daily work time is
8 less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as
9 hours worked for which there shall be no deduction from wages.

10 (D) If an employer fails to provide an employee a rest period in accordance with the
11 applicable provisions of this order, the employer shall pay the employee one (1) hour of
12 pay at the employee's regular rate of compensation for each workday that the rest period
13 is not provided."

14 37. During the relevant time period, Plaintiff was not provided with rest breaks as required
15 by law and did not receive an additional hour of premium pay for each missed rest break.

16 38. Wherefore, Plaintiff has been injured and request relief as hereinafter provided.

17 **FOURTH CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
19 **(Lab. Code, §§ 226.7, 512)**
20 **Against Defendants**

21 39. Plaintiff hereby realleges and incorporates by reference each and every allegation
22 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 40. Labor Code section 226.7 requires employers to provide employees meal periods as
25 mandated by Order of the Industrial Welfare Commission. It states:

26 a. No employer shall require any employee to work during any meal or rest
27 period mandated by an applicable order of the Industrial Welfare
28 Commission.

b. If an employer fails to provide an employee a meal period or rest period in
accordance with an applicable order of the Industrial Welfare Commission,
the employer shall pay the employee one additional hour of pay at the

1 employee's regular rate of compensation for each work day that the meal or
2 rest period is not provided.

3 41. Labor Code section 512(a) and the applicable wage order provide that an employer
4 may not employ a person for a work period of more than five hours per day without providing that
5 employee a meal period of not less than thirty minutes, except that if the total work period per day
6 is no more than six hours, the meal period may be waived by mutual consent of both the employer
7 and employee. An employer may not employ a person for a work period of more than ten hours
8 per day without providing an employee with a second meal period of not less than thirty minutes,
9 except that if the total work period per day of the employee is no more than twelve hours, the meal
10 period may be waived by mutual consent of both the employer and the employee, and if the first
11 meal period was not waived.

12 42. During the relevant time period, Plaintiff was not provided with meal breaks as
13 required by law and did not receive an additional hour of premium pay for each missed meal
14 period.

15 43. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

16 **FIFTH CAUSE OF ACTION**
17 **FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS**
18 **(Lab. Code, § 226(a))**
19 **Against Defendants**

20 44. Plaintiff hereby realleges and incorporates by reference each and every allegation set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 45. Pursuant to Labor Code section 226(a) "every employer shall, semimonthly or at the
24 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
25 check, draft, or voucher paying the employee's wages, or separately when the wages are paid by
26 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
27 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
28 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the

1 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
2 last four digits of his or her social security number or an employee identification number, (8) the name
3 and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during
4 the pay period and corresponding number of hours worked at each hourly rate by the employee and, if
5 the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each
6 temporary services assignment.”

7 46. An employee suffering injury as a result of the knowing and intentional failure by an
8 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
9 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
10 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
11 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
12 fees. (Lab. Code, § 226, subd. (e)(1).)

13 47. An employee is deemed to suffer injury if the employer fails to provide a wage
14 statement or if the employer fails to provide accurate and complete information as required by any one
15 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
16 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
17 during the pay period or any of the other information required to be provided pursuant to Labor Code
18 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
19 and address of the employer and iv) the name of the employee and the last four digits of his or her
20 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
21 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain
22 the information without reference to other documents or information. (Lab. Code, § 226, subd.
23 (e)(2)(C).)

24 48. As set forth above, Defendants intentionally and willfully failed to furnish accurate
25 itemized wage statements which complied with Labor Code section 226.

26 49. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter
27 provided.

- 1 6. That this Court award prejudgment and post-judgment interest according to any
2 applicable provision of law or as otherwise permitted by law; and
3 7. That this Court award such other and further relief as the court deems just and proper.

4 ///

5 **DATED:** August 5, 2022

MAYALL HURLEY P.C.

6 By _____



7 JOHN P. BRISCOE
8 Attorneys for Plaintiff
9 ERNIE MADRIGAL