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on behalf of themselves and others similarly situated

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN JOAQUIN

11 JASON GUTIERREZ and LOUIE YLIZ, on
behalf of themselves and others similarly
12 situated,

13 Plaintiff,

14 vs.

15 AGTAC SERVICES, LLC, a limited liability
company; and DOES 1 through 50, inclusive,

16 Defendants.
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Case No. STK-CV- UOE-2022-0006123

CLASS ACTION

Assigned for All Purposes To:

Hon. Jayne Lee

Dept.: 10C

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Recovery of Reporting Time Pay
4. Failure to Pay Split-Shift
5. Meal-Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and 1174.5
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Business & Professions Code § 17200 et seq.
12. Penalties Pursuant to Labor Code § 2699, et seq.

DEMAND FOR JURY TRIAL

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Plaintiffs JASON GUTIERREZ and LOUIE YLIZ, (hereinafter collectively “Plaintiffs”) on behalf of themselves and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of them, as follows:

INTRODUCTION

1. Plaintiffs brings this action on behalf of themselves and all current and former Employees within the State of California who, at any time four (4) years prior to the filing of this lawsuit, are or were employed as non-exempt, hourly employees by Defendants AGTAC SERVICES, LLC, a limited liability company and DOES 1 through 50 (all defendants being collectively referred to herein as "Defendants"). Plaintiffs allege that Defendants, and each of them, violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and California Business & Professions Code, and seeks redress, therefore.

2. Plaintiffs are residents of California and during the time period relevant to this Complaint were employed by Defendants as a non-exempt hourly employee within the State of California at Defendants' facilities and offices in California. Plaintiffs and the other Class members worked for Defendants in California and San Joaquin County, and in other nonexempt positions, throughout California and, and consistently worked at Defendants' behest without being paid all wages due. More specifically, Plaintiffs and the other similarly situated Class members were employed by Defendants and worked at Defendants' offices and other facilities where the conduct giving rise to the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiffs were employed by Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same policies and practices, and (3) endured similar violations at the hands of Defendants as the other Employee Class members who served in similar and related positions.

3. Defendants required Plaintiffs and the Employees in the Class to perform work while remaining under Defendants' control before and after being on the clock for their daily work shift. Defendants further failed to accurately record time worked by Plaintiff and the Employee Class members by rounding hours worked to the nearest quarter hour to their detriment.

1 Defendants thus failed to pay Plaintiffs and the Class members for all hours worked, and provided
2 them with inaccurate wage statements that prevented Plaintiffs and the Class from learning of
3 these unlawful pay practices. Defendants also failed to provide Plaintiffs and the Class with
4 lawful meal and rest periods, as employees were not provided with the opportunity to take timely,
5 uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

6 THE PARTIES

7 A. The Plaintiffs

8 4. Plaintiffs JASON GUTIERREZ and LOUIE YLIZ have resided in California and
9 during the time period relevant to this Complaint was employed by Defendants as a non-exempt
10 hourly employee within the State of California at Defendants' facilities and offices in California.

11 B. The Defendants

12 5. Defendant AGTAC SERVICES, LLC, ("AS") is a limited liability company with
13 its principle executive office in Lincoln, Nebraska, and has been listed as the employer on the
14 wage statements issued to Plaintiffs during the relevant time period. AS lists a non-California
15 address in Lincoln, Nebraska with the California Secretary of State, but employs the Class
16 members in San Joaquin County, including at Defendants' offices and facilities in Stockton,
17 California, and throughout California and conducts business throughout California.

18 6. The true names and capacities, whether individual, corporate, associate, or
19 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
20 unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names under Code of
21 Civil Procedure § 474. Plaintiffs are informed and believes and thereon alleges that Defendants
22 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
23 some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
24 this Complaint to reflect the true names and capacities of the Defendants designated herein as
25 Does 1 through 50 when their identities become known.

26 7. Plaintiffs are informed and believe and thereon alleges that each Defendant acted in
27 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
28 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of

1 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
2 all respects as the employers or joint employers of Employees. Defendants, and each of them,
3 exercised control over the wages, hours or working conditions of Employees, or suffered or
4 permitted Employees to work, or engaged, thereby creating a common law employment
5 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
6 employed Employees.

7 JURISDICTION AND VENUE

8 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
9 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
10 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
11 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
12 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
13 obligations and liabilities giving rise to this lawsuit occurred at least in part in San Joaquin County
14 and Defendants maintain and operate company offices and facilities in San Joaquin County and
15 employ Plaintiffs and other Class members in California San Joaquin County and throughout
16 California.

17 FACTUAL BACKGROUND

18 9. The Employees who comprise the Class and Collective, including Plaintiffs, are
19 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
20 Employees who work in nonexempt positions at the direction of Defendants in the State of
21 California. Plaintiffs and the Class members were either not paid by Defendants for all hours
22 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically, by
23 traveling between Defendants' business locations on a daily basis. Moreover, prior to clocking in
24 to start their shifts Employees had to undergo health screenings and temperature checks, wait for
25 Defendants' employees to open a gate of entry if they were working after midnight, restock
26 supplies, have discussions regarding assignments with supervisors, and clean the premises. After
27 the end of their shifts Employees had to perform tasks that supervisors assigned them including
28 cleaning. Additionally, Defendants required the Employee Class members to clock in and out by

1 submitting their hours and also for supervisors to monitor the Employee Class members' time. The
2 timekeeping system thus permitted Defendants to record clock in and clock out times to the real-
3 time minute. However, rather than paying Plaintiff and the Class members for all hours and
4 minutes they actually worked, Defendants followed a uniform policy and practice of rounding all
5 time entries to the nearest quarter hour (i.e., to the nearest 15 minute time increment), and
6 generally did so to the detriment of the Employees, and these unlawfully rounded time entries
7 were inputted into Defendants' payroll system from which wage statements and payroll checks
8 were created. Defendants did so with the ostensible intent of paying Class members only for the
9 hours they were scheduled to work, rather than the hours they were actually under Defendants'
10 control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the
11 Class members by systematically undercompensating them. Plaintiffs also contend that
12 Defendants failed to pay Plaintiffs and the Class members all wages due and owing, failed to
13 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of
14 various provisions of the California Labor Code and applicable Wage Orders.

15 10. Additionally, from at least four (4) years prior to the filing of this lawsuit and
16 continuing to the present, Defendants' failed to pay other non-party Employees a split-shift
17 premium when they returned to work for an additional shift in the same day, after having been
18 clocked out for more than an hour.

19 11. Additionally, from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants' policies and practices required them to show up to work but
21 not being paid half said Employees' usual or scheduled day's work in violation of California law.

22 12. During the course of Plaintiffs and the Class members' employment with
23 Defendants, they were not paid all wages they were owed, including for all work performed and
24 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
25 labor budgets low.

26 13. Defendants had also either failed to maintain timekeeping records for Plaintiff that
27 would permit him to discover the nature and extent of Defendants' unlawful rounding or has
28 refused to produce them to Plaintiff in response to his timely request to be provided with them.

1 14. As a matter of uniform Company policy, Plaintiffs and the Class members were
2 required to work during their meal and rest breaks which were not compensated by Defendants in
3 violation of the California Labor Code. Plaintiffs and the Class members were also not paid
4 regular wages and overtime for the time they were required to comply with other requirements
5 imposed upon them, which they had to complete while working through their meal and rest breaks
6 and without compensation. As a result Plaintiffs and the Class members worked shifts over eight
7 (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
8 appropriate overtime rate for all such hours, including by being required to perform work duties
9 and tasks without pay and while off-the-clock and due to Defendants' unlawful rounding which
10 caused overtime to begin accruing before it did in Defendants' timekeeping and payroll systems.
11 As a result, Plaintiffs and the Class members worked substantial overtime hours during their
12 employment with Defendants for which they were not compensated, in violation of the California
13 Labor Code, applicable IWC Wage Orders.

14 15. As a result of the above described unlawful rounding, the daily work demands and
15 pressures to work through breaks, and the other wage violations they endured at Defendants'
16 hands, Plaintiffs and the Class members were not properly paid for all wages earned and for all
17 wages owed to them by Defendants, including when working more than eight (8) hours in any
18 given day and/or more than forty (40) hours in any given week. As a result of Defendants'
19 unlawful policies and practices, Plaintiffs and Class members incurred overtime hours worked for
20 which they were not adequately and completely compensated. To the extent applicable,
21 Defendants also failed to pay Plaintiffs and the Class members at an overtime rate of 1.5 times the
22 regular rate for the first eight hours of the seventh consecutive work day in a week and overtime
23 payments at the rate of 2 times the regular rate for hours worked over eight (8) on the seventh
24 consecutive work day, as required under the Labor Code, applicable IWC Wage Orders.

25 16. Therefore, from at least four (4) years prior to the filing of this lawsuit and
26 continuing to the present, Defendants had a consistent policy or practice of failing to pay
27 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
28 by California Law.

1 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
2 continuing to the present, Defendants had a consistent policy or practice of failing to pay
3 Employees overtime compensation at premium overtime rates for all hours worked in excess of
4 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
5 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
6 sections of IWC Wage Orders.

7 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
8 continuing to the present, Defendants have regularly required Employees to work shifts in excess
9 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
10 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
11 periods of not less than thirty minutes; nor did Defendants pay Employees "premium pay," i.e. one
12 hour of wages at each Employee's effective regular rate of pay, for each meal period that
13 Defendants failed to provide or deficiently provided.

14 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
15 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
16 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
17 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
18 provided or were deficiently provided at one hour of wages at each Employee's effective regular
19 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

20 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
21 continuing to the present, Defendants have consistently failed to provide Employees with timely,
22 accurate, and itemized wage statements as required by California wage-and-hour laws.
23 Specifically, the wage statements given to Employees by Defendants failed to accurately account
24 for wages, overtime, and premium pay for deficient meal periods and rest breaks, all of which
25 Defendants knew or reasonably should have known were owed to Employees, as alleged
26 hereinabove. The wage statements provided to Employees were confusing and required
27 Employees to engage in discovery and refer to outside sources to verify whether their pay was
28 correct and potentially resulting in a miscalculation by the Employees.

- 1 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the required rates of pay, including for all
5 hours worked in excess of eight in a day and/or forty in a week.
- 6 c. Subclass 3. Failure to Pay Split-Shift. All Class members who were subject to
7 Defendants' policy and/or practice of not failing to pay other non-party Employees a split-shift
8 premium when they returned to work for an additional shift in the same day, after having been
9 clocked out for more than an hour.
- 10 d. Subclass 4. Recovery of Reporting Time Pay. All Class members who were subject
11 to Defendants' policy and/or practice of not compensating reporting time pay.
- 12 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
14 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 15 f. Subclass 6. Rest Break Subclass. All Class members who were subject to
16 Defendants' policy and/or practice of failing to authorize and permit Employees to take
17 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
18 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 19 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
20 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
21 by California wage-and-hour laws.
- 22 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
23 applicable limitations period, were not provided with accurate itemized wage statements.
- 24 i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class
25 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
26 the performance of Employees job duties for Defendants which were necessary to perform their
27 duties under Defendants' employ.
- 28 j. Subclass 10. Termination Pay Subclass. All Class members who, within the

1 applicable limitations period, either voluntarily or involuntarily separated from their employment
2 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
3 termination.

4 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
5 result of Defendants' business acts and practices, to the extent such acts and practices are found to
6 be unlawful, deceptive, and/or unfair.

7 29. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or
8 modify the class description with greater particularity or further division into subclasses or
9 limitation to particular issues.

10 30. This action has been brought and may properly be maintained as a class action
11 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
12 of interest in litigation and proposed class is easily ascertainable.

13 **A. Numerosity**

14 31. The potential members of the class as defined are so numerous that joinder of all
15 the member of the class is impracticable. While the precise number of class member has not been
16 determined at this time, Plaintiffs are informed and believe that Defendants employ or, during the
17 time period relevant to this lawsuit, employed more than 100 individuals were employed by
18 Defendant's within the State of California.

19 32. Accounting for employee turnover during the relevant time period increases this
20 number substantially. Plaintiffs allege that Defendants' employment records will provide
21 information as to the number and location of all class members.

22 **B. Commonality**

23 33. There are questions of law and fact common to the class that predominate over any
24 questions affecting only individual class members. These common questions of law and fact
25 include:

- 26 a. Whether Defendants failed to pay Employees minimum wages;
- 27 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 28 c. Whether Defendants failed to pay Employees overtime as required under Labor

- 1 Code § 510;
- 2 d. Whether Defendants failed to pay Employees reporting time pay;
- 3 e. Whether Defendants failed to pay Employees a split Shift;
- 4 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
- 5 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
- 6 premium pay in lieu thereof;
- 7 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
- 8 Orders, by failing to provide Employees with requisite rest breaks or premium pay
- 9 in lieu thereof;
- 10 h. Whether Defendants violated Labor Code § 226(a);
- 11 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 12 j. Whether Defendants failed to reimburse Employees for necessary business
- 13 expenses;
- 14 k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
- 15 wages and compensation due and owing at the time of termination of employment;
- 16 l. Whether Defendants violated Business and Professions Code § 17200 et seq.;
- 17 m. Whether Defendants are liable for penalties under Labor Code § 2699, et seq.; and
- 18 n. Whether Employees are entitled to equitable relief pursuant to Business and
- 19 Professions Code § 17200 et seq.

20 **C. Typicality**

21 34. The claims of the named plaintiffs are typical of those of the other Employees.

22 Employees all sustained injuries and damages arising out of and caused by Defendant's common

23 course of conducts in violation of statutes, as well as regulations that have the force and effect of

24 law, as alleged herein.

25 **D. Adequacy of Representation**

26 35. Plaintiffs will fairly and adequately represent and protect the interest of Employees.

27 Counsel who represents Employees are experienced and competent in litigating employment class

28 actions.

1 E. **Superiority of Class Action**

2 36. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
4 questions of law and fact common to all Employees predominate over any questions affecting only
5 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
6 Defendants' illegal policies or practices of failing to compensate Employees properly.

7 37. Class action treatment will allow those persons similarly situated to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiffs are unaware of any difficulties in managing this case that should preclude class action.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(Against All Defendants)**

13 38. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
14 full herein.

15 39. Defendants failed to pay Employees minimum wages for all hours worked.
16 Defendants had a consistent policy of misstating Employees time records and failing to pay
17 Employees for all hours worked. Employees would work hours and not receive wages, including
18 as alleged above in connection with working during meal breaks, regarding rounding of
19 timekeeping entries and time off the clock Employees without compensation. Specifically, by
20 traveling between Defendants' business locations on a daily basis. Moreover, prior to clocking in
21 to start their shifts Employees had to undergo health screenings and temperature checks, wait for
22 Defendants' employees to open a gate of entry if they were working after midnight, restock
23 supplies, have discussions regarding assignments with supervisors, and clean the premises. After
24 the end of their shifts Employees had to perform tasks that supervisors assigned them including
25 cleaning. Additionally, Defendants had a consistent policy of failing to pay Employees for hours
26 worked during alleged meal periods for which Employees were consistently denied, as also
27 addressed herein. Defendants, and each of them, have also intentionally and improperly rounded,
28 changed, adjusted and/or modified Employee hours, while benefiting Defendants. During the

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22 Defendants' employees to open a gate of entry if they were working after midnight, restock
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24 the end of their shifts Employees had to perform tasks that supervisors assigned them including
25 cleaning. Additionally, Defendants had a consistent policy of failing to pay Employees for hours
26 worked during alleged meal periods for which Employees were consistently denied, as also
27 addressed herein. Defendants, and each of them, have also intentionally and improperly rounded,
28 changed, adjusted and/or modified Employee hours, while benefiting Defendants. During the

1 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the
2 Class members, including by unlawful rounding to their detriment. Moreover, Defendants did not
3 pay Plaintiffs and Employees at the applicable minimum wage for all hours worked. Defendants'
4 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
5 the Class as a whole, as a result of implementing a uniform policy and practice that denied
6 accurate compensation to Plaintiffs and the other members of the Class as to minimum wage pay.

7 40. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

8 The minimum wage for employees fixed by the commission is the
9 minimum wage to be paid to employees, and the payment of a less
10 wage than the minimum so fixed is unlawful.

11 41. The applicable minimum wages fixed by the commission for work during the
12 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
13 therefore entitled to double the minimum wage during the relevant period.

14 42. The minimum wage provisions of California Labor Code are enforceable by private
15 civil action pursuant to California Labor Code § 1194(a) which states:

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

22 43. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
23 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

24 44. California Labor Code § 1194.2 also provides for the following remedies:

25 In any action under Section 1194 . . . to recover wages because of
26 the payment of a wage less than the minimum wages fixed by an
27 order of the commission, an employee shall be entitled to recover
28 liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

45. Defendants have the ability to pay minimum wages for all time worked and have
willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

46. Wherefore, Employees are entitled to recover the unpaid minimum wages

1 (including double minimum wages), liquidated damages in an amount equal to the minimum
2 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
3 to California Labor Code § 1194(a).

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

6 **(Against All Defendants)**

7 47. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 48. By their conduct, as set forth herein, Defendants violated California Labor Code §
10 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
11 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
12 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
13 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
14 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
15 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
16 paying Employees wages for all hours worked including time off the clock by traveling between
17 Defendants' business locations on a daily basis. Moreover, prior to clocking in to start their shifts
18 Employees had to undergo health screenings and temperature checks, wait for Defendants'
19 employees to open a gate of entry if they were working after midnight, restock supplies, have
20 discussions regarding assignments with supervisors, and clean the premises. After the end of their
21 shifts Employees had to perform tasks that supervisors assigned them including cleaning.
22 Defendants also consistently improperly rounded down, changed, adjusted Employees time
23 records, paid Employees less than their time records showed as demonstrated by Employees'
24 timesheets which reveal little variance between the hours worked by employees on a daily basis.

25 49. Employees regularly worked over 8 hours on a given day without receiving
26 overtime compensation.

27 50. Defendants' failure to pay compensation in a timely fashion also constituted a
28 violation of California Labor Code § 204, which requires that all wages shall be paid

1 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
2 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
3 and overtime compensation earned by Employees. Each such failure to make a timely payment of
4 compensation to Employees constitutes a separate violation of California Labor Code § 204.

5 51. Employees have been damaged by these violations of California Labor Code §§
6 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

7 52. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
8 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the
9 full amount of all their unpaid wages and overtime compensation, with interest, plus their
10 reasonable attorneys' fees and costs.

11 THIRD CAUSE OF ACTION

12 RECOVERY OF REPORTING TIME PAY

13 (Against All Defendants)

14 53. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
15 full herein.

16 54. The IWC Wage Orders, require that reporting time pay be provided to any
17 employee who is required to report for work and does report, but is not put to work or is furnished
18 less than half said employee's usual or scheduled day's work.

19 55. Plaintiffs are informed and believes and thereon alleges that all or substantially all
20 of Defendants' hourly paid employees are subject to Defendants' policies and practices requiring
21 them to show up to work but not being paid half said Employees' usual or scheduled day's work.

22 56. Therefore, Employees are owed the unpaid balance of said wages pursuant to the
23 Wage order according to proof at trial, Interest pursuant to Labor Code §§ 218.6 and 1194(a),
24 Civil Code §§ 3287 and § 3289, and reasonable attorneys' fees and costs and/or penalties pursuant
25 to Labor Code § 558(a).

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FOURTH CAUSE OF ACTION
FAILURE TO PAY SPLIT-SHIFT
(Against All Defendants)

57. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in full herein.

58. California Labor Code §1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code §1198 further requires that "... the standard conditions of labor fixed by the commission shall be the... standard conditions of labor for employees. The employment of any employee... under conditions of labor prohibited by the order is unlawful."

59. California Code of Regulations, Title 8, §11030(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

60. Defendants willfully violated California Labor Code §1198 and California Code of Regulations, Title 8, §11030(4)(C), because Defendants failed to pay other non-party Employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour.

61. Defendants' failure to provide other non-party Employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code §1198 and California Code of Regulations Title 8, §11030(4)(C).

62. Therefore, Employees are owed the unpaid balance of said according to proof at trial and reasonable attorneys' fees and costs.

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1 **FIFTH CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 63. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
5 full herein.

6 64. Employees regularly worked shifts greater than five (5) hours and greater than ten
7 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
8 more than five (5) hours without providing him or her with a meal period of not less than thirty
9 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
10 meal period of not less than thirty (30) minutes.

11 65. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Moreover, Defendants' policy of requiring the = Employees to keep
14 their cell phones on throughout their meal breaks and to respond to any emergencies or other
15 situations that needed to be addressed prevented = Employees from taking their breaks.
16 Employees were also required to take meal periods after working well beyond the five (5) hour
17 shifts. Furthermore, Employees were regularly required to work for more than 10 hours in a given
18 shift without receiving a second uninterrupted thirty (30) minute meal period as required by law.

19 66. Moreover, Defendants failed to compensate Employees for each meal period not
20 provided or inadequately provided, as required under Labor Code § 226.7.

21 67. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
22 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
23 period not provided or deficiently provided, a sum to be proven at trial.

24 **SIXTH CAUSE OF ACTION**

25 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

26 **(Against All Defendants)**

27 68. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
28 full herein.

1 69. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
2 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
3 not less than ten (10) minutes for each consecutive four (4) hour shift.

4 70. Defendants failed to provide Employees with timely rest breaks of not less than ten
5 (10) minutes for each consecutive four (4) hour shift. Moreover, Defendants' policy of requiring
6 the Employees to keep their cell phones on throughout their rest breaks and to respond to any
7 emergencies or other situations that needed to be addressed prevented Employees from taking
8 their breaks. Additionally, under *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
9 (2016) "[D]uring required rest periods, employers must relieve their employees of all duties and
10 relinquish any control over how employees spend their break time." Defendants' did not allow
11 Employees to leave the Defendants' location and this is directly at odds with *Augustus*, as it
12 "tethered [employees] by time and policy to a particular location" and therefore fails to relieve
13 employees of all work duties and employer control during rest periods. *Augustus*, 2 Cal.5th at 269.

14 71. Moreover, Defendants did not compensate Employees with an additional hour of
15 pay at each Employee's effective hourly rate for each day that Defendants failed to provide them
16 with adequate rest breaks, as required under Labor Code § 226.7.

17 72. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
18 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
19 worked without the required rest breaks, a sum to be proven at trial.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**

22 **IN VIOLATION OF LABOR CODE § 2802**

23 **(Against All Defendants)**

24 73. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
25 full herein.

26 74. Under Labor Code § 2802(a) an employer must indemnify its employees for all
27 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
28 of his or her duties, or of his or her obedience to the directions of the employer.

1 75. Employees incurred necessary expenditures in the performance of their job duties
2 for Defendants, namely the cost of , cell phone usage, and costs for vehicle maintenance, mileage,
3 and fuel, which were necessary to perform their duties under Defendants' employ. From four (4)
4 years prior to the original filing of this lawsuit and continuing to the present, Defendants
5 consistently failed to reimburse Employees for these necessarily incurred business expenses.

6 76. As a result of the unlawful acts of Defendants, Employees have been deprived of
7 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
8 plus interest and penalties thereon, attorneys' fees, and costs.

9 **EIGHTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

12 77. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
13 full herein.

14 78. California Labor Code § 226(a) requires an employer to furnish each of his or her
15 employees with an accurate, itemized statement in writing showing the gross and net earnings,
16 total hours worked, and the corresponding number of hours worked at each hourly rate; these
17 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
18 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
19 statements may be given to the employee separately from the payment of wages; in either case the
20 employer must give the employee these statements twice a month or each time wages are paid.

21 79. Defendants failed to provide Employees with accurate itemized wage statements in
22 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
23 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
24 and rest periods, and reflected the incorrect hours worked due to the rounding all of which
25 Defendants knew or reasonably should have known were owed to Employees, as alleged
26 hereinabove.

27 80. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
28 Employees suffered injuries, including among other things confusion over whether they received

1 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
2 forcing them to make mathematical computations to analyze whether the wages paid in fact
3 compensated them correctly for all hours worked.

4 81. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
5 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
6 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
8 award of costs and reasonable attorneys' fees.

9 82. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
10 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
11 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
12 employee for each pay period.

13 83. Plaintiffs are seeking penalties against Defendants under Labor Code § 226.3, and
14 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
15 shown according to proof.

16 NINTH CAUSE OF ACTION

17 FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174

18 AND 1174.5

19 (Against All Defendants)

20 84. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
21 full herein.

22 85. California Labor Code § 1174 requires that all employers shall keep accurate time
23 and wage records for all employees. California Labor Code § 1174.5 further requires that any
24 employee suffering injury due to a willful violation of the aforementioned obligations may seek
25 damages, including civil penalties, from the employer.

26 86. During the course of Plaintiffs' and Employees' employment, Defendants
27 consistently failed to maintain accurate time and wage records for Plaintiffs and Employees as
28 required by California Labor Code § 1174 by failing to pay Plaintiffs and Employees proper

1 wages, overtime, and premium pay as discussed above.

2 87. Accordingly, Defendants are liable for civil penalties pursuant to the California
3 Labor Code §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

4 **TENTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 203**

6 **(Against All Defendants)**

7 88. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
8 full herein.

9 89. Numerous Employees are no longer employed by Defendants; they either quit
10 Defendants' employ or were fired therefrom.

11 90. Defendants failed to pay these Employees all wages due and certain at the time of
12 termination or within seventy-two (72) hours of resignation.

13 91. The wages withheld from these Employees by Defendants remained due and owing
14 for more than thirty (30) days from the date of separation of employment.

15 92. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
16 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
17 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
18 to thirty (30) days from the date they were due.

19 **ELEVENTH CAUSE OF ACTION**

20 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

21 **(Against All Defendants)**

22 93. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
23 full herein.

24 94. Plaintiffs, on behalf of themselves, Employees, and the general public, brings this
25 claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as
26 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees
27 and the general public. Plaintiffs seek to enforce important rights affecting the public interest
28 within the meaning of Code of Civil Procedure

1 § 1021.5.

2 95. Plaintiffs are a "person" within the meaning of Business & Professions Code
3 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
4 relief, restitution, and other appropriate equitable relief.

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

7 97. Wage-and-hour laws express fundamental public policies. Paying employees their
8 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
9 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
10 to enforce minimum labor standards, to ensure that employees are not required or permitted to
11 work under substandard and unlawful conditions, and to protect law-abiding employers and their
12 employees from competitors who lower costs to themselves by failing to comply with minimum
13 labor standards.

14 98. Defendants have violated statutes and public policies. Through the conduct alleged
15 in this Complaint Defendants have acted contrary to these public policies, have violated specific
16 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
17 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiffs,
18 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
19 guaranteed to all employees under the law.

20 99. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of the Business & Professions Code § 17200 *et seq.*

22 100. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
23 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
24 care should have known that their conduct was unlawful; therefore their conduct violates the
25 Business & Professions Code § 17200 *et seq.*

26 101. As a proximate result of the above-mentioned acts of Defendants, Employees have
27 been damaged, in a sum to be proven at trial.

28 102. Unless restrained by this Court Defendants will continue to engage in such

1 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
2 make such orders or judgments, including the appointment of a receiver, as may be necessary to
3 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
4 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
5 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
6 failed to pay.

7 **TWELFTH CAUSE OF ACTION**

8 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

9 **(Against All Defendants)**

10 103. Plaintiffs re-allege and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 104. Plaintiffs and Employees are aggrieved employees as defined under Labor Code §
13 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
14 alleged violators, Defendants.

15 105. Plaintiffs seek penalties under Labor Code §§ 2698 and 2699 for Defendants'
16 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
17 penalty provisions, without limitation, based on the following California Labor Code sections:
18 201, 202, 203, 204, 210, 218.5, 218.6 226, 226.3, 226.4, 226.7, 510, 512, 558, 558.1, 1174,
19 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, et seq., and 2802.

20 106. The penalties shall be allocated as follows: 75% to the Labor and Workforce
21 Development Agency (LWDA) and 25% to the affected employee.

22 107. Employees also seek any and all penalties and remedies set forth in Labor Code §
23 558, which states:

24 (a) Any employer or other person acting on behalf of an employer who
25 violates, or causes to be violated, a section of this chapter or any provision
26 regulating hours and days of work in any order of the Industrial Welfare
27 Commission shall be subject to a civil penalty as follows: (1) For any initial
28 violation, fifty dollars (\$50) for each underpaid employee for each pay period for

1 which the employee was underpaid in addition to an amount sufficient to recover
2 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
3 each underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages. (3)
5 Wages recovered pursuant to this section shall be paid to the affected employee.

6 (b) If upon inspection or investigation the Labor Commissioner determines that
7 a person had paid or caused to be paid a wage for overtime work in violation of any
8 provision of this chapter, or any provision regulating hours and days of work in any
9 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
10 citation. The procedures for issuing, contesting, and enforcing judgments for
11 citations or civil penalties issued by the Labor Commissioner for a violation of this
12 chapter shall be the same as those set out in Section 1197.1.

13 (c) The civil penalties provided for in this section are in addition to any other
14 civil or criminal penalty provided by law.

15 108. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
16 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
17 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
18 for each violation in a subsequent citation, for which the employer fails to provide the employee a
19 wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the
20 extent that Labor Code § 226.3 applies, Plaintiffs and Employees also seeks such penalties on.

21 109. Plaintiffs have exhausted their administrative remedy by sending a certified letter to
22 the LWDA and Defendants postmarked on July 18, 2022. The LWDA has not provided notice of
23 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
24 letters.

25 RELIEF REQUESTED

26 WHEREFORE, Plaintiffs prays for the following relief:

- 27 1. For an order certifying this action as a class action;
- 28 2. For compensatory damages in the amount of the unpaid minimum wages for work

1 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
2 the filing of this action, as may be proven;

3 3. For liquidated damages in the amount equal to the unpaid minimum wage and
4 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

5 4. For compensatory damages in the amount of the hourly wage made by Employees
6 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
7 years prior to the filing of this action, as may be proven;

8 5. For compensatory damages in the amount of all unpaid wages, including overtime
9 and double-time pay, as may be proven;

10 6. For recovery of the unpaid balance of the full amount of the reporting time pay due
11 pursuant to the applicable Wage Order as may be proven;

12 7. For recovery of the split-shift wages as may be proven ;

13 8. For compensatory damages in the amount of the hourly wage made by Employees
14 for each day requisite rest breaks were not provided or were deficiently provided where no
15 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
16 be proven;

17 9. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

18 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
19 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

20 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

21 12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

22 13. For restitution for unfair competition pursuant to Business & Professions Code
23 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

24 14. For compensatory damages in the amount of all previously unreimbursed business
25 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
26 from four (4) years prior to the original filing of this action, as may be proven;

27 15. For an order enjoining Defendants and their agents, servants, and employees, and
28 all persons acting under, in concert with, or for them, from acting in derogation of any rights or

1 duties adumbrated in this Complaint;

2 16. For all general, special, and incidental damages as may be proven;

3 17. For an award of pre-judgment and post-judgment interest;

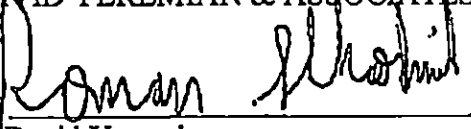
4 18. For an award providing for the payment of the costs of this suit;

5 19. For an award of attorneys' fees; and

6 20. For such other and further relief as this Court may deem proper and just.

7
8 DATED: October 24, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

9
10 By 

David Yeremian

Roman Shkodnik

Attorneys for Plaintiffs

JASON GUTIERREZ and

LOUIE YLIZ

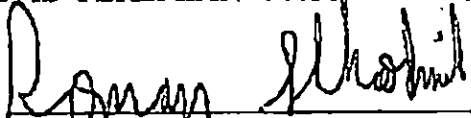
and the putative class

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

DATED: October 24, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian

Roman Shkodnik

Attorneys for Plaintiffs

JASON GUTIERREZ and LOUIE YLIZ
and the putative class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201 La Crescenta, CA 91214.

On October 24, 2022, I served the foregoing: **JOINT STIPULATION FOR ENTRY OF AN ORDER GRANTING PLAINTIFFS LEAVE TO FILE FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

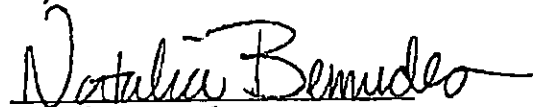
Angela J. Rafoth
arafoth@littler.com
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104

☒ (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☒ (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above

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

Executed on October 24, 2022, at La Crescenta, California.


Natalia Bermudes