

Gary M Johnson
Judicial Officer, Assigned for All Purposes

KLUFT LAW, P.C.

STUART H. KLUFT, State Bar No. 315081
35 N Lake Ave., Ste. 710
Pasadena, CA 91101
Telephone: (626) 432-5422
Email: skluft@kluftlawfirm.com

MAHONEY LAW GROUP, APC

KEVIN MAHONEY, State Bar No. 235367
JOHN A. YOUNG, State Bar No. 299809
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400
Email: kmahoney@mahoney-law.net
jyoung@mahoney-law.net

Attorneys for Plaintiff Jaime Perez, individually,
and on behalf of all others similarly situated.

ELECTRONICALLY FILED

Superior Court of California,
County of Tulare

05/13/2025

By: Charisma Hughes,
Deputy Clerk

Case Management Conference

05/19/2025 08:30 AM - Department 07

To obtain an ADR packet please visit the court's website.

<https://www.tulare.courts.ca.gov/divisions/civil>

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

JAIME PEREZ, individually and on behalf of)
all others similarly situated,)

Plaintiff,)

v.)

MARTIN AG, INC., a California Corporation;)
and DOES 1 through 20, inclusive,)

Defendants.)

CASE NO: VCU321572

CLASS ACTION COMPLAINT

- (1) FAILURE TO PAY MINIMUM WAGES;**
- (2) FAILURE TO PAY OVERTIME WAGES;**
- (3) FAILURE TO PROVIDE MEAL PERIODS;**
- (4) FAILURE TO PERMIT REST BREAKS;**
- (5) FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS;**
- (6) FAILURE TO TIMELY PAY ALL WAGES DURING EMPLOYMENT;**
- (7) FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT;**
- (8) FAILURE TO REIMBURSE BUSINESS EXPENSES; AND**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**(9) UNLAWFUL, UNFAIR, AND
DECEPTIVE BUSINESS
PRACTICES (BUSINESS AND
PROFESSIONS CODE SECTIONS
17200, ET SEQ.).**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Jamie Perez, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Jaime Perez (“Plaintiff”) brings this putative class action against
5 defendants Martin AG, Inc., and DOES 1 through 20, inclusive (collectively, “Defendants”), on
6 Plaintiff’s own behalf and on behalf of a putative class of California citizens who are and were
7 employed by Defendants as non-exempt employees throughout California.

8 2. Defendants provide services or goods throughout California.

9 3. Through this action, Plaintiff alleges that Defendants engaged in unlawful
10 discrimination, harassment, and retaliation of Plaintiff and that Defendants engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
12 Commission (“IWC”) Wage Orders against Plaintiff and the Class Members, all of which
13 contribute to Defendants’ deliberate unfair competition.

14 4. Plaintiff is informed and believe, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation in
19 lieu thereof;
- 20 (d) failing to provide accurate itemized wage statements;
- 21 (e) failing to pay wages timely during employment; and
- 22 (f) failing to pay all wages due upon separation of employment.

23 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
24 others similarly situated in California to recover, among other things, unpaid wages, benefits,
25 interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§ 201, 202,
26 203, 204, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, 2441, 2800, 2802, and
27 Code of California Civil Procedure § 1021.5.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3

7

2

5

6

9

22

26

1 Complaint and serve such fictitiously named defendants once their names and capacities become
2 known.

3 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are
4 or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all
5 relevant times.

6 15. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in
7 all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme,
8 business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally
9 attributable to the other defendant. Furthermore, Defendants in all respects acted as the employer
10 and/or joint employer of Plaintiff and the class members.

11 16. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
12 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
13 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's
14 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
15 policy of Defendants.

16 17. At all relevant times, Defendants, and each of them, acted within the scope of such
17 agency or employment, or ratified each and every act or omission complained of herein. At all
18 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
19 and all the other Defendants in proximately causing the damages herein alleged.

20 18. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
21 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
22 occurrences, and transactions alleged herein.

23 **GENERAL ALLEGATIONS**

24 19. At all relevant times mentioned herein, Defendants employed Plaintiff and other
25 California residents as non-exempt employees throughout California at Defendants' California
26 business location(s).

27 20. Defendants continue to employ non-exempt employees within California.

1 21. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who
3 were knowledgeable about California's wage and hour laws, employment and personnel practices,
4 and the requirements of California law.

5 22. In approximately January of 2024, Plaintiff, a male over 40 years old, began
6 working for Defendants as a semi-truck driver who hauled milk using Defendants' vehicles.

7 23. Plaintiff while employed worked for a period on "light duty," whereby Plaintiff was
8 assigned to work at a computer for extremely long hours, approximately 12 hours per day (12:00
9 p.m. – 3:00 a.m.).

10 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to receive wages for all time
12 worked (including minimum wages and overtime wages) throughout their entire employments and
13 that they were not receiving all wages earned for work that was required to be performed. For
14 instance, Plaintiff and Class Members worked off-the-clock before and after their shifts as they
15 were expected and required to, Plaintiff and Class Members were instructed by Defendants to input
16 their scheduled time (not actual time worked) on paper, resulting in purposefully underreporting
17 worked time and causing inaccurate and incorrectly rounded punch times. For example, Plaintiff
18 typically worked for approximately two hours off-the-clock every day he drove one of Defendants'
19 vehicles, due to: being required to wait off-the-clock for milk loads at the dairy; dropping off the
20 vehicle in a specific area, off-the-clock; and walking paperwork to Defendants to their main office,
21 off-the-clock. As such, Defendants violated the Labor Code and IWC Wage Orders because
22 Plaintiff and Class Members were not paid all wages (including minimum wages and overtime
23 wages) for all hours worked at the correct rate and within the correct time.

24 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and Class Members were entitled to receive all required meal
26 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate
27 of pay when they did not receive a timely, uninterrupted meal period. For instance, Plaintiff and
28

1 Class Members worked off-the-clock during their reported meal periods as they were instructed
2 by Defendants to input a thirty-minute break (not actual time worked) on paper, resulting in
3 purposefully underreporting worked time and causing inaccurate and incorrectly rounded meal
4 period punch times. As such, Defendants violated the Labor Code and IWC Wage Orders because
5 Plaintiff and Class Members did not receive all their lawful and uninterrupted meal periods or
6 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
7 when they did not receive a timely, uninterrupted meal period.

8 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
10 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
11 when a rest break was late, missed, or interrupted. For instance, Defendants expected and required
12 Plaintiff and the Class Members to work without interruptions and as such a lawful rest period was
13 never provided as it was frowned upon to break during a job. As such, Defendants violated the
14 Labor Code and IWC Wage Orders because Plaintiff and Class Members did not receive all their
15 lawful and uninterrupted rest breaks or payment of one (1) additional hour of pay at Plaintiff's and
16 Class Members' regular rate of pay when a rest break was missed, late, or interrupted.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Class Members were entitled to reimbursement for necessary
19 business expenditures they made in direct consequence of the discharge of their duties, or of their
20 obedience to the directions of Defendants. Here, Plaintiff and the Class Members were required to
21 buy pens and markers to write on company bottles, which were not reimbursed.

22 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Class Members were entitled to receive itemized wage
24 statements that accurately showed the following information pursuant to the Labor Code: (1) gross
25 wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned
26 and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions,
27 provided that all deductions made on written orders of the employee may be aggregated and shown
28

1 as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
2 paid; (7) the name of the employee and only the last four digits of his or her social security number
3 or an employee identification number other than a social security number; (8) the name and address
4 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
5 period and the corresponding number of hours worked at each hourly rate by the employee. In
6 violation of the Labor Code, Plaintiff and Class Members were not provided with accurate itemized
7 wage statements.

8 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that the Waiting Time Subclass was entitled to timely payment of wages due
10 upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass did
11 not receive payment of all wages within the permissible time periods.

12 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known they had a duty to compensate Plaintiff and Class Members for all hours
14 worked and in a timely basis, and Defendants had the financial ability to pay such compensation.
15 However, Defendants willfully, knowingly, and intentionally failed to do so in order to increase
16 Defendants' profits.

17 31. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
18 against Defendants on Plaintiff's own behalf and on behalf of all Class Members to recover, among
19 other things, unpaid wages (including minimum wages and overtime wages), unpaid meal period
20 premium payments, unpaid rest period premium payments, unreimbursed business expenditures,
21 interest, attorneys' fees, penalties, costs, and expenses.

22 **CLASS ACTION ALLEGATIONS**

23 32. Plaintiff brings this action under Code of Civil Procedure § 382 on Plaintiff's own
24 behalf and on behalf of all others similarly situated who were affected by Defendants' Labor Code,
25 Business and Professions Code §§ 17200, and IWC Wage Order violations.

26 33. All claims alleged herein arise under California law for which Plaintiff seeks relief
27 authorized by California law.
28

1 34. Plaintiff's proposed class consists of and is defined as follows:

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between four (4) years
5 from the date this complaint is filed through and including the date of class
6 certification ("Class").

7 35. Plaintiff also seeks to certify the following subclasses of employees:

8 Waiting Time Subclass

9 All members of the Class who separated their employment with Defendant at any
10 time between three (3) years from the date this complaint is filed through and
11 including and the date of class certification ("Waiting Time Subclass").

12 36. Plaintiff reserves the right to modify or re-define the Class, establish additional
13 subclasses, or modify or re-define any class or subclass definition as appropriate based on
14 investigation, discovery, and specific theories of liability.

15 37. Members of the Class and the Waiting Time Subclass described above will be
16 collectively referred to as "Class Members."

17 38. There are common questions of law and fact as to the Class Members that
18 predominate over any questions affecting only individual members including, but not limited to,
19 the following:

20 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
21 (including minimum wages and overtime wages) for all hours worked by
22 Plaintiff and Class Members.

23 (b) Whether Defendants required Plaintiff and Class Members to work over
24 eight (8) hours per day, over twelve (12) hours per day, and/or over forty
25 (40) hours per week and failed to pay them proper overtime compensation
26 for all overtime hours worked.

27 ///

- 1 (c) Whether Defendants deprived Plaintiff and Class Members of timely meal
2 periods.
- 3 (d) Whether Defendants required Plaintiff and Class Members to work through
4 meal periods without legal compensation.
- 5 (e) Whether Defendants deprived Plaintiff and Class Members of rest breaks.
- 6 (f) Whether Defendants required Plaintiff and Class Members to work through
7 rest breaks.
- 8 (g) Whether Defendants failed to provide Plaintiff and Class Members accurate
9 itemized wage statements.
- 10 (h) Whether Defendants failed to pay wages timely to Plaintiff and Class
11 Members;
- 12 (i) Whether Defendants failed to timely pay the Waiting Time Subclass all
13 wages due upon termination or within seventy-two (72) hours of
14 resignation.
- 15 (j) Whether Defendants failed to reimburse Plaintiff and Class Members for all
16 business expenses made on behalf of Defendants.
- 17 (k) Whether Defendants' conduct was willful or reckless.
- 18 (l) Whether Defendants engaged in unfair business practices in violation of
19 Business and Professions Code §§ 17200, *et seq.*

20 39. There is a well-defined community of interest in this litigation and the proposed
21 Class and subclasses are readily ascertainable:

22 (a) Numerosity: The Class Members are so numerous that joinder of all
23 members is impractical. Although the members of the Class are unknown to Plaintiff at this time,
24 on information and belief, the Class is estimated to be greater than one hundred (100) individuals.
25 The identities of the Class Members are readily ascertainable by inspection of Defendants'
26 employment and payroll records.

27 ///

1 (b) Typicality: Plaintiff's claims (or defenses, if any) are typical of the claims
2 (or defenses, if any) of the Class Members because Defendants' failure to comply with the
3 provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits,
4 and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the
5 Class Members, because they arise out of and are caused by Defendants' common course of
6 conduct as alleged herein.

7 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
8 interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims
9 alleged herein to obtain full compensation and penalties due. Plaintiff's attorneys, as proposed
10 class counsel, are competent and experienced in litigating large employment class actions and
11 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
12 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs
13 that have been and will be necessarily expended for the prosecution of this action for the substantial
14 benefit of the Class Members.

15 (d) Superiority: The nature of this action makes use of class action adjudication
16 superior to other methods. A class action will achieve economies of time, effort, and expense as
17 compared with separate lawsuits and will avoid inconsistent outcomes because the same issues can
18 be adjudicated in the same manner for the entire Class and Waiting Time Subclass at the same
19 time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently manage
20 this case as a class action.

21 40. Public Policy Considerations: Employers in the State of California violate
22 employment and labor laws every day. Current employees are often afraid to assert their rights out
23 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
24 they believe their former employers might damage their future endeavors through negative
25 references and/or other means. Class actions provide class members who are not named in the
26 complaint with a type of anonymity that allows for the vindication of their rights while affording
27 them privacy protections.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 41. Plaintiff also seeks to proceed pursuant to the California Private Attorney General
3 Act, Labor Code section 2698 et seq. (“PAGA”). Plaintiff is in the process of exhausting all
4 administrative prerequisites to maintaining such representative action. Upon exhaustion of all
5 administrative prerequisites Plaintiff will amend his Complaint as a matter of right pursuant to
6 Labor Code section 2699.3 in order to maintain a representative action under PAGA and to recover
7 all penalties provided by the PAGA and due to Plaintiff and similarly situated aggrieved
8 employees.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;**

12 **Violation of IWC Wage Order §3-4)**

13 **Plaintiff and Class Members against all Defendants**

14 42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
15 though fully set forth herein.

16 43. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
17 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
18 the minimum so fixed is unlawful.

19 44. Plaintiff and Class Members were employees entitled to the protections of Labor
20 Code §§ 1194 and 1197.

21 45. During the relevant time period, Defendants failed to pay Plaintiff and Class
22 Members all wages owed when Defendants did not pay minimum wage for all hours worked.

23 46. During the relevant time period, Defendants failed to pay at least minimum wage
24 to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

25 47. Defendants’ failure to pay Plaintiff and Class Members the required minimum
26 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class

27 ///

1 Members are entitled to recover the unpaid balance of their minimum wage compensation as well
2 as interest, costs, and attorneys' fees.

3 48. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
4 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
5 interest thereon.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 **(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)**

9 **Plaintiff and Class Members against all Defendants**

10 49. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 50. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
13 to employ persons without compensating them at a rate of pay either one and one-half (1½) or two
14 (2) times the person's regular rate of pay, depending on the number of hours worked by the person
15 on a daily or weekly basis.

16 51. Specifically, the applicable IWC Wage Orders provide that Defendants are and
17 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and
18 one-half times (1½) their regular rate of pay when working and for all hours worked in excess of
19 eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours
20 of work on the seventh day of work in a workweek.

21 52. The applicable IWC Wage Orders further provide that Defendants are and were
22 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their
23 regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day
24 or in excess of eight (8) hours on the seventh day of work in a workweek.

25 53. California Labor Code § 510 codifies the right to overtime compensation at one and
26 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day
27 or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive
28

1 day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess
2 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in
3 a workweek.

4 54. Labor Code § 510 and the applicable IWC Wage Orders provide that employment
5 of more than six days in a workweek is only permissible if the employer pays proper overtime
6 compensation as set forth herein.

7 55. Plaintiff and Class Members were employees entitled to the protections of
8 California Labor Code §§ 510 and 1194.

9 56. During the relevant time period, Defendants required Plaintiff and Class Members
10 to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh
11 consecutive day of work, entitling them to overtime wages.

12 57. During the relevant time period, Defendants failed to pay Plaintiff and Class
13 Members overtime wages for all overtime hours worked. To the extent these hours qualify for the
14 payment of overtime wages, Plaintiff and Class Members were not paid proper overtime wages.

15 58. In violation of California law, Defendants knowingly and willfully refused to
16 perform their obligations and compensate Plaintiff and Class Members for all wages earned and all
17 hours worked.

18 59. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
19 overtime compensation, as required by California law, violates the provisions of Labor Code §§
20 510 and 1198, and is therefore unlawful.

21 60. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover
22 their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)**

26 **Plaintiff and Class Members against all Defendants**

27 ///

1 61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
2 though fully set forth herein.

3 62. Labor Code § 226.7 provides that no employer shall require an employee to work
4 during any meal period mandated by the IWC Wage Orders.

5 63. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ
6 any person for a work period of more than five (5) hours without a meal period of not less than 30
7 minutes, except that when a work period of not more than six (6) hours will complete the day’s
8 work the meal period may be waived by mutual consent of the employer and the employee.”

9 64. Labor Code § 512(a) provides that an employer may not require, cause, or permit
10 an employee to work for a period of more than five (5) hours per day without providing the
11 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
12 total work period per day of the employee is not more than six (6) hours, the meal period may be
13 waived by mutual consent of both the employer and the employee.

14 65. Labor Code § 512(a) also provides that an employer may not employ an employee
15 for a work period of more than ten (10) hours per day without providing the employee with a second
16 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
17 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
18 and the employee only if the first meal period was not waived.

19 66. During the relevant time period, Plaintiff and Class Members did not receive
20 compliant meal periods for working more than five (5) and ten (10) hours per day because their
21 meal periods were missed, late, short, interrupted, and/or they were not permitted to take a second
22 meal period.

23 67. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
24 an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
25 compensation for each work day that a compliant meal period is not provided.

26 ///

27 ///

1 68. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
2 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b) and
3 section 11 of the applicable IWC Wage Order.

4 69. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
5 hour of pay for each day a compliant meal period was not provided, Plaintiff and Class Members
6 suffered and continue to suffer a loss of wages and compensation.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO PERMIT REST BREAKS**

9 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

10 **Plaintiff and Class Members against all Defendants**

11 70. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 71. Labor Code § 226.7(a) provides that no employer shall require an employee to work
14 during any rest period mandated by the IWC Wage Orders.

15 72. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
16 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
17 middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the total
18 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
19 thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

20 73. During the relevant time period, Plaintiff and Class Members did not receive a ten
21 (10) minute rest period for every four (4) hours or major fraction thereof worked, including working
22 in excess of ten (10) hours in a day, because they were required to work through their rest periods
23 and/or were not authorized to take their rest periods.

24 74. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
25 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
26 compensation for each work day that a compliant rest period is not provided.

27 ///

1 75. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
2 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b)
3 and section 12 of the applicable IWC Wage Order.

4 76. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
5 hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members
6 suffered and continue to suffer a loss of wages and compensation.

7 **FIFTH CAUSE OF ACTION**

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

9 **(Violation of Labor Code § 226; Violation of IWC Wage Order)**

10 **Plaintiff and Class Members against all Defendants**

11 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 78. Labor Code § 226(a) requires Defendants to provide each employee with an
14 accurate wage statement in writing showing nine pieces of information, including, the following:
15 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
16 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
17 provided that all deductions made on written orders of the employee may be aggregated and shown
18 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
19 paid, (7) the name of the employee and the last four digits of his or her social security number or
20 an employee identification number other than a social security number, (8) the name and address
21 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the employee.

23 79. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff and
25 Class Members. The deficiencies include, among other things, the failure to correctly state the gross
26 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number of
27 hours worked at each hourly rate by Plaintiff and Class Members.

1 80. As a result of Defendants' knowing and intentional failure to comply with Labor
2 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
3 protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury pursuant
4 to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a).
5 Plaintiff and Class Members were denied both their legal right to receive, and their protected
6 interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In addition,
7 because Defendants failed to provide the accurate rates of pay on wage statements, Defendants
8 prevented Plaintiff and Class Members from determining if all hours worked were paid at the
9 appropriate rate and the extent of the underpayment. Plaintiff had to file this lawsuit in order to
10 analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses and lost time.
11 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
12 provided the accurate hours worked, wages earned, and rates of pay. This has also delayed
13 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

14 81. Plaintiff and Class Members are entitled to recover from Defendants the greater of
15 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
16 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
17 (\$100.00) per employee for each violation in subsequent pay periods in an amount not exceeding
18 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

19 82. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
20 Class Members from knowing, understanding, and disputing the wages paid to them and resulted
21 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
22 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members
23 have suffered an injury, in the exact amount of damages and/or penalties to be shown according to
24 proof at trial.

25 ///

26 ///

27 ///

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY TIMELY DURING EMPLOYMENT**

3 **(Violation of Labor Code §§ 204, 210)**

4 **Plaintiff and Class Members against all Defendants**

5 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 84. Pursuant to California Labor Code § 204, employees must be paid within a certain
8 number of days of the close of the pay period.

9 85. During the relevant time period, Defendants failed to timely pay Plaintiff and Class
10 Members wages earned during the pay period.

11 86. Such a pattern, practice and uniform administration of corporate policy regarding
12 timely payment of wages as described herein is unlawful and creates an entitlement to recovery by
13 Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including
14 interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California
15 Labor Code § 210.

16 87. As a direct and proximate cause of these violations, Class Members have been
17 damaged, in an amount to be determined at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

20 **(Violation of Labor Code §§ 201, 202, and 203)**

21 **Plaintiff and Class Members against all Defendants**

22 88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 89. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
25 the wages earned and unpaid at the time of discharge are due and payable immediately, and that if
26 an employee voluntarily leaves his or her employment, his or her wages shall become due and

27 ///

1 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
2 two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his
3 or her wages at the time of quitting.

4 90. During the relevant time period, Defendants willfully failed to pay the Waiting
5 Time Subclass all their earned wages upon termination, either at the time of discharge or within
6 seventy-two (72) hours of their leaving Defendants' employ.

7 91. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the
8 time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in
9 violation of Labor Code §§ 201 and 202.

10 92. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
11 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
12 the wages of the employee shall continue as a penalty from the due date at the same rate until paid
13 or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

14 93. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
15 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members'
16 regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a
17 maximum of thirty (30) days.

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(Violation of Labor Code §§ 2800, 2802, *et seq.*)**

21 **Plaintiff and Class Members against all Defendants**

22 94. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 95. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his
25 employee for losses caused by the employer's want of ordinary care."

26 ///

27 ///

96. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer”

97. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

98. Labor Code § 2802(c) states that “[f]or purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

99. During the relevant time period, Plaintiff and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants.

100. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and intentional failure to reimburse necessary business expenditures in connection with Plaintiff's and Class Members' work and job duties.

101. As a direct result, Plaintiff and Class Members have suffered and continue to suffer losses, and therefore seek complete reimbursement and indemnification of necessary business expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.*

(Violation of Business and Professions Code §§ 17200, *et seq.*)

Plaintiff and Class Members against all Defendants

102. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

1 103. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice”

3 104. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
4 predicated on a violation of any state or federal law. In the instant case, Defendants’ policies and
5 practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer
6 injuries-in-fact.

7 105. Defendants’ policies and practices violated state law in at least the following
8 respects:

- 9 (a) Failing to pay all wages earned (including minimum wage and overtime
10 wages) to Plaintiff and Class Members at the proper rate and in a timely
11 manner in violation of Labor Code §§ 204, 510, 1194, 1194.2, 1197, 1198.
- 12 (b) Failing to provide compliant meal periods without paying Plaintiff and
13 Class Members premium wages for every day said meal periods were not
14 provided in violation of Labor Code §§ 226.7 and 512.
- 15 (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff
16 and Class Members premium wages for every day said rest breaks were not
17 authorized or permitted in violation of Labor Code § 226.7.
- 18 (d) Failing to provide Plaintiff and Class Members with accurate itemized wage
19 statements in violation of Labor Code § 226.
- 20 (e) Failing to reimburse Plaintiff and Class Members for all business expenses
21 made on behalf of Defendants in violation of Labor Code §§ 2800, 2802,
22 *et. seq.*
- 23 (f) Failing to timely pay all earned wages to the members of the Waiting Time
24 Subclass upon separation of employment in violation of Labor Code §§ 201,
25 202, and 203.

26 ///

27 ///

1 106. As alleged herein, Defendants systematically engaged in unlawful conduct in
2 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
3 (minimum and overtime wages), failing to provide meal periods and rest breaks or compensation
4 in lieu thereof, failing to reimburse necessary business-related costs and expenses, failing to furnish
5 accurate wage statements, and failing to pay all wages due and owing upon separation of
6 employment in a timely manner to the Waiting Time Subclass, all in order to decrease their costs
7 of doing business and increase their profits.

8 107. At all relevant times herein, Defendants held themselves out to Plaintiff and Class
9 Members as being knowledgeable concerning the labor and employment laws of California.

10 108. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
11 Class Members wages and monies, thereby creating for Defendants an artificially lower cost of
12 doing business in order to undercut their competitors and establish and/or gain a greater foothold
13 in the marketplace.

14 109. By violating the foregoing statutes and regulations as herein alleged, Defendants'
15 acts constitute unfair and unlawful business practices under California Business and Professions
16 Code §§ 17200, *et seq.*

17 110. As a result of the unfair and unlawful business practices of Defendants as alleged
18 herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution
19 in an amount to be shown according to proof at trial.

20 111. Plaintiff seeks to enforce important rights affecting the public interest within the
21 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
22 has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the
23 general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are
24 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

25 ///

26 ///

27 ///

1 **PRAYER FOR RELIEF**

2 On Plaintiff's own behalf and on behalf of all others similarly situated, Plaintiff prays for
3 relief and judgment against Defendants, jointly and severally, as follows:

- 4 1. For certification under California Code of Civil Procedure § 382 of the proposed
5 Class and any other appropriate subclass;
- 6 2. For appointment of Jaime Perez as class representative;
- 7 3. For appointment of Kluft Law, P.C. and Mahoney Law Group, APC, as class
8 counsel for all purposes;
- 9 4. For compensatory damages in an amount according to proof at trial;
- 10 5. For an award of damages in the amount of unpaid compensation including, but not
11 limited to, unpaid wages, unreimbursed expenses, benefits, and penalties;
- 12 6. For economic and/or special damages in an amount according to proof at trial;
- 13 7. For liquidated damages pursuant to Labor Code § 1194.2;
- 14 8. For statutory penalties to the extent permitted by law, including those pursuant to
15 the Labor Code and IWC Wage Orders;
- 16 9. For injunctive relief as provided by the California Labor Code and California
17 Business and Professions Code §§ 17200, *et seq.*;
- 18 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 19 11. For an order requiring Defendants to restore and disgorge all funds to each
20 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair,
21 or fraudulent and, therefore, constituting unfair competition under Business and Professions Code
22 §§ 17200, *et seq.*;
- 23 12. For pre-judgment interest;
- 24 13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
25 law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e)
26 and 1194; and
- 27 14. For such other relief as the Court deems just and proper.

Dated: May 13, 2025

KLUFT LAW, P.C.

By: _____

Stuart Harris Kluft

Attorneys for Plaintiff Jaime Perez and on behalf
of all others similarly situated

Dated: May 13, 2025

MAHONEY LAW GROUP, APC

By: _____

Kevin Mahoney

John A. Young

Attorneys for Plaintiff Jaime Perez and on behalf
of all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: May 13, 2025

KLUFT LAW, P.C.

By: 

Stuart Harris Kluft

Attorneys for Plaintiff Jaime Perez and on behalf
of all others similarly situated

Dated: May 13, 2025

MAHONEY LAW GROUP, APC

By: 

Kevin Mahoney

John A. Young

Attorneys for Plaintiff Jaime Perez and on behalf
of all others similarly situated

EXHIBIT A



John Young, Esq.
562.590.5550 phone
562.590.8400 facsimile
jyoung@mahoney-law.net

March 24, 2025

VIA ON-LINE FILING

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
<https://dir.govfa.net/308>

VIA CERTIFIED MAIL # 9589 0710 5270 2375 1943 74

MARTIN AG, INC.
ATTN: SETH MARTIN
27616 Road 176
Exeter, CA 93221

Re: Jaime Perez v. Martin AG, Inc.

This letter constitutes notice of California Labor Code violations by employer Martin AG, Inc. (“MAI” or “Defendant”). This notice is made by aggrieved employee Jaime Perez (“Perez” or “Plaintiff”) on behalf of herself and similarly situated aggrieved employees (hereinafter “Aggrieved Employees”) over the relevant statute of limitations period.

During this period, Defendant engaged in a series of consistent policies and practices throughout the state of California which violated various Labor Code provisions. These policies and practices are described herein.

MAI’S CONDUCT IN VIOLATION OF LABOR CODE

A. Failure to Pay Minimum Wage for All Hours Worked

Labor Code section 1197 provides that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.” Under the California minimum wage law, each hour of work must be separately compensated at the applicable minimum hourly rate of least \$16.00¹ per hour.

¹ During relevant times of this Complaint, the California minimum wage has changed pursuant the amendment to Labor Code section 1182.12, and herein Plaintiff alleges the wages as required by such statute at such relevant times.

Employers are not permitted to satisfy their minimum wage obligation by averaging or shifting the amount of pay earned at sub-minimum and above-minimum wage rates. And an employer thus violates the law by implementing a pay policy that treats certain hours of work as unproductive or otherwise ineligible for compensation.

Notwithstanding these requirements, Defendant failed and refused to pay the applicable minimum wage rate for all hours worked by Plaintiff and the Aggrieved Employees. For instance, Plaintiff and Class Members worked off-the-clock before and after their shifts as they were expected and required to, Plaintiff and Class Members were instructed by Defendants to input their scheduled time (not actual time worked) on paper, resulting in purposefully underreporting worked time and causing inaccurate and incorrectly rounded punch times and unpaid minimum wages. For example, Plaintiff typically worked for approximately two hours off-the-clock every day he drove one of Defendants' vehicles, due to: being required to wait off-the-clock for milk loads at the dairy; dropping off the vehicle in a specific area, off-the-clock; and walking paperwork to Defendants to their main office, off-the-clock.

Wherefore, no compensation whatsoever was therefore paid for the many hours of work completed before, during, and after Plaintiff and the Aggrieved Employees' work shifts because of Defendants' policies, practices, and procedures.

Thus, Defendants failed to pay at least the Minimum wage to Plaintiff and the Aggrieved Employees at the time they were to be lawfully compensated and continue to remain unpaid up through the present day with continuing daily violations.

B. Failure to Pay Premium Compensation for All Overtime Hours Worked

Pursuant to California Labor Code Section 510(a), and IWC Wage Orders, Section 3, "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

Labor Code section 1194(a) provides that "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal 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."

Defendants nevertheless implemented consistent policies and practices that systematically denied all legally required overtime premium pay due, including the following:

- a. Maintaining a policy of not paying Plaintiff and the Aggrieved Employees for daily overtime for hours worked in excess of the time recorded per Defendants policies,

procedures, and practices such as when Plaintiff and Class Members worked off-the-clock before and after their shifts as they were expected and required to, Plaintiff and Class Members were instructed by Defendants to input their scheduled time (not actual time worked) on paper, resulting in purposefully underreporting worked time and causing inaccurate and incorrectly rounded punch times and unpaid overtime. For example, Plaintiff typically worked for approximately two hours off-the-clock every day he drove one of Defendants' vehicles, due to: being required to wait off-the-clock for milk loads at the dairy; dropping off the vehicle in a specific area, off-the-clock; and walking paperwork to Defendants to their main office, off-the-clock;

- b. Maintaining a policy whereby hourly employees, including Plaintiff and the Aggrieved Employees, were not paid for that time worked thereby having unpaid time over the time permitted to record regardless of the actual hours of work performed for Defendant;
- c. Through the aforementioned, Defendants maintain an illegal pay plan designed to undercalculate the amount of overtime compensation due under the Labor Code to Plaintiff and the Aggrieved Employees.

As such, during their employment with Defendants, Plaintiff and the Aggrieved Employees routinely worked more than eight hours in a day and forty hours per week—as they were given workloads that could not reasonably be accomplished within eight hours per day, and/or over forty hours per week (at times more than sixty hours per week)—without receiving all premium overtime compensation due.

Thus, Defendants failed to pay the lawfully required premium overtime compensation to Plaintiff and the Aggrieved Employees at the time they were to be lawfully compensated and continue to have premium overtime compensation unpaid up through the present day with continuing daily violations.

C. Failure to Provide Off-Duty Meal and Rest Breaks

Pursuant to California Labor Code Section 512 and IWC Wage Orders, sections 11 and 12, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, during which time the employee must be fully relieved of all duty. To constitute a *bona fide* meal period the employer must affirmatively relieve the employee of all work duties. Pursuant to Labor Code section 226.7 and the aforementioned Wage Orders each failure to provide the specified meal period entitles the employee to receive an additional compensation premium equal to one hour of pay.

Pursuant to California Public Policy and the provisions of Labor Code Sections 206.5, and

219(a), no purported agreement to work for a lesser wage or to work without meal or rest-period compensation may be legally enforceable and any such purported express or implied agreement is “null and void.”

Notwithstanding these legal requirements, Defendants understood that Plaintiff and the Aggrieved Employees had worked off-the-clock during their reported meal periods as they were instructed by Defendants to input a thirty-minute break (not actual time worked) on paper, resulting in purposefully underreporting worked time and causing inaccurate and incorrectly rounded meal period punch times. Moreover, Defendants expected and required Plaintiff and the Class Members to work without interruptions and as such a lawful rest period was never provided as it was frowned upon to break during a job. Defendants also adopted a uniform policy and practice of refusing to pay the premium compensation due as a consequence of requiring Plaintiff and the Aggrieved Employees to work without legally compliant off-duty break periods.

Thus, Defendants failed to provide lawfully required meal and rest periods and refused and/or failed to pay the premium compensation due under California law up through the present day, which still remain unpaid and continuing to accrue daily violations.

D. Failure to Timely Pay Wages Due

Labor Code section 200 defines “wages” as including “all amounts for labor performed by employees of every description.”

Pursuant to California Public Policy and Labor Code sections 200, 204, and 201-203, it is the fundamental right of California workers to receive timely payment of all compensation due, including without limitation, commissions, premium overtime compensation, and premium compensation due for working without compliant meal and rest breaks.

Wages due belong to the employee and not to the employer. California law recognizes moreover that wages are not ordinary debts and are preferred over other claims. Because of the average workers dependence on wages for the necessities of life for himself/herself and his/her family, it is essential to the public welfare that workers receive pay when it is due.

Consistent with these objectives and public policy, California Labor Code section 221 provides that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 223 further provides that “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

Labor Code § 204 provides that earned wages are to be paid no less frequently than bi-weekly, and within the pay period in which they are earned.

Pursuant to California Labor Code Sections 201-203, all compensation earned by an employee is due to be paid within 72 hours of termination to any employee who resigns with less than 72 hours' notice. Compensation earned by all other employees is due "immediately" upon termination of their employment.

Notwithstanding these affirmative legal duties imposed by California law, Defendants have engaged in a consistent policy and practice of refusing to timely pay the earned wages of Plaintiff and the Aggrieved Employees, both during their employment and following the termination of employment. Notwithstanding these affirmative legal duties imposed by California law, Defendants have engaged in a consistent policy and practice of refusing to timely pay the earned wages of Plaintiff and the Aggrieved Employees, both during their employment and following the termination of employment. For example, Defendant's policy and/or practice of not paying work completed beyond their scheduled shifts or during recorded, but untaken, meal periods remain unpaid and due and continuing.

Thus, Defendants failed to pay all lawfully required wages to Plaintiff and the Aggrieved Employees at the time of their termination of employment, thereby accruing Waiting Time Penalties pursuant to Labor Code section 203 as those wages continue to remain unpaid up through the present day.

E. Failure to Keep Records and Provide Disclosures and Itemized Pay Statements

Pursuant to California Labor Code sections 226 and 1174, and Wage Order 9-2001, section 7, Defendants are required to keep accurate, itemized records of all hours worked and all compensation earned by Plaintiff and the Aggrieved Employees members.

Pursuant to Labor Code section 2810.5, California employers are required to provide written notice and disclosure of specified material facts concerning the nature of the employer and the employment. These include the legal identity and any "dba" used by the employer, as well as the methods and rates used to calculate wages.

Pursuant to Labor Code section 2751, California employers are required to set forth in writing the contractual method by which commissions shall be computed and paid.

Labor Code sections 226(a), 226.2, 201.3 and the aforementioned Wage Orders, also require that Defendants shall provide its California employees with accurate, itemized statement showing, *inter alia*, "total hours worked by the employee," "piece rate units" earned, "all deductions," "net wages earned," "all applicable hourly rates for all hours worked," "the name and address of the legal entity that is the employer," and the amount of paid sick leave accrued and available applicable to the employee.

Notwithstanding these affirmative legal requirements, Defendant failed to properly maintain the required records, failed to accurately itemize all hours worked and premium

compensation due, and failed to provide the notices and disclosures required by the applicable Labor Code and Wage Order provisions to Plaintiff and the Aggrieved Employees members.

Thus, Defendants failed to keep all legally required records, failed to provide the legally required disclosures, and failed to accurately itemize records of all hours worked and compensation earned by Plaintiff and the Aggrieved Employees.

F. Failure to Reimburse Business Expenses

Pursuant to Labor Code section 2802 “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” which includes business related expenses. Moreover, Labor Code section 2804 states that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is *null and void*...” (Emphasis added.)

During Plaintiff and the Aggrieved Employees’ employments with Defendants, Defendants failed and refused to reimburse all necessary purchases made by Plaintiff and the Class in direct consequence of their duties, such as when they purchase pen and markers to write on Defendants’ bottles.

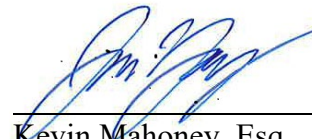
Thus, Defendants failed to reimburse Plaintiff and the Aggrieved Employees as required by law for all necessary expenditures or losses incurred in direct consequence of the discharge of their, or through their obedience to the directions of Defendants. As such, no reimbursement compensation whatsoever has therefore been paid for the business expenses paid by Plaintiff and the Aggrieved Employees and continues to remain unpaid and accruing violations to this day.

G. Equitable Tolling of Claims

In doing the acts alleged herein, Defendant adopted policies and practices that fraudulently concealed the nature of the operative facts including the time periods and number of hours worked by Plaintiff and the Aggrieved Employees, the correct calculation of hourly wage rates, and the applicable “regular rate” for purposes of calculating overtime wages. Defendant had an affirmative legal duty to provide accurate information as to these facts but instead provided misleading and inaccurate information calculated to obscure and conceal the underpayment of wages and to induce the reasonable reliance by Plaintiff and the Aggrieved Employees on these representations. As a result, the applicable statute of limitations has been tolled during the pendency of these misrepresentations and non-disclosures.

Sincerely,

MAHONEY LAW GROUP, APC.



Kevin Mahoney, Esq.
John A. Young, Esq.