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MARCOS TAMAYO HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

MARCOS TAMAYO HERNANDEZ, an
individual,

Plaintiff,

vs.

PETRA MARKET LLC DBA PETRA
MARKET AND SMOKE SHOP, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 25STCV06678

COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION AS EXEMPT (Wage Order No. 7);**
- 2. FAILURE TO PAY PREMIUM OVERTIME WAGES (Cal. Labor Code §§ 510, 511, 1194, 1198; IWC Wage Order No. 7);**
- 3. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 7)**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 7)**
- 5. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 7);**
- 6. WAITING TIME PENALTIES (Cal. Labor Code §226; IWC Wage Order No. 7);**
- 7. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);**
- 8. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 9. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**

10. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.)

DEMAND FOR A JURY TRIAL

MARCOS TAMAYO HERNANDEZ (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Complaint under *Code of Civil Procedure* §410.10 and *Business & Professions Code* §§ 17200 et seq.

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in Los Angeles County and because Defendant Petra Market LLC dba Petra Market and Smoke Shop owned and operated their business in Los Angeles County.

II. PARTIES

3. At all times relevant hereto, Plaintiff Marcos Tamayo Hernandez (hereinafter “Plaintiff”) was an individual over age 18 and a resident of Los Angeles, California.

4. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendant Petra Market LLC dba Petra Market and Smoke Shop (“PM” or “Defendant”), has been, and is a California limited liability company, with a principal place of business at 655 S. Flower Street, Los Angeles, California 90017. Plaintiff is informed and believes and thereon alleges that at all times material hereto PM has been authorized to do business and has been doing business in the State of California.

5. Plaintiff is informed and believes and thereon alleges, that at all times relevant herein, Defendant and some of DOES 1 through 100 were the agents, employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things herein alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

1 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
2 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
3 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
4 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
5 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
6 individual person who owned, controlled, or managed the business for which Plaintiff worked
7 and/or who directly or indirectly exercised operational control over the wage policies of
8 Plaintiff. These DOE Defendants held ownership, officer, director and/or executive positions
9 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
10 included decision-making responsibility for, and establishment of, wage and hour violations for
11 Defendants which have damaged Plaintiff. Therefore, Does 1 through 100, in addition to the
12 remaining Defendants, are “employers” as a matter of law and are liable on the causes of action
13 alleged herein.

14 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
15 through 100 are, and at all times relevant hereto were, persons, corporations or other business
16 entities organized and existing under and by virtue of the laws of the State of California, and
17 are/were qualified to transact and conduct business in the State of California, and did transact
18 and conduct business in the State of California, and are thus subject to the jurisdiction of the
19 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
20 employ persons, conduct business and engage in wage and hour violations in the County of Los
21 Angeles.

22 8. Plaintiff is further informed and believes, and thereon alleges, that each of the
23 fictitiously named Defendants aided and assisted the named Defendants in committing the
24 wrongful acts alleged herein, and that Plaintiff’s damages were proximately caused by each
25 Defendant.

26 **III. PAGA NOTICE**

27 9. Pursuant to the California Labor Code, on or about March 7, 2025, Plaintiff filed
28 a notice with Labor and Workforce Development Agency (LWDA) of his intent to pursue

claims against Defendant under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to amend this Complaint once he completes and complies with the provisions under the law.

IV. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF ACTION

Employment Information

10. Plaintiff was an employee of PM since on or about June 5, 2023. Plaintiff worked in Stocking for PM. Plaintiff's job entailed stocking merchandise. He typically worked 6 days a week and 48 or more hours per week. Plaintiff was paid a salary of \$100 per day, no matter how many hours he worked. He was employed at PM until February 11, 2025, when Plaintiff was wrongfully terminated.

Wage and Hour Violations

11. The employment by PM of Plaintiff is governed by Industrial Welfare Commission Wage Order No. 7, which covers those persons in the mercantile industry.

12. Plaintiff was willfully misclassified as exempt in violation of Wage Order No. 7.

13. Plaintiff was not paid overtime.

14. Plaintiff was not paid minimum wages.

15. Plaintiff was not afforded any rest breaks while he worked at PM.

16. Plaintiff's meal breaks were afforded late, after the fifth hour of his shift.

17. As a result of Defendant's failure to pay Plaintiff overtime, minimum wages, and afford compliant meal/rest breaks, the wage statements issued to him did not comply with Labor Code §226 and California Industrial Welfare Commission ("IWC") Wage Order No. 7 in that they did not accurately reflect all wages earned and due and owing.

18. As a further result of Defendant's failure to pay overtime, minimum wages, afford meal/rest breaks to Plaintiff, when Plaintiff left their employ, he was not timely paid all wages due him, as required by Labor Code §§ 201, 202 and Wage Order No. 7.

19. Plaintiff was not reimbursed for his necessary business expenses.

20. Defendant failed to provide Plaintiff with his requested employment records.

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FIRST CAUSE OF ACTION

WILLFUL MISCLASSIFICATION AS EXEMPT

(Wage Order No. 7 By Plaintiff Against Defendant and Does 1-100)

21. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

22. Defendant misclassified Plaintiff as an exempt employee rather than non-exempt in violation of IWC Wage Order No. 7, for its own financial benefit.

23. The California Industrial Welfare Commission Wage Order No. 7 identifies three exemptions to the provisions of the wage order: executive exemption, administrative exemption, and professional exemption. None of the exemptions apply to Plaintiff.

24. On information and belief Defendant decided to wrongfully treat Plaintiff as an exempt employee.

25. Plaintiff did not meet the requirements of being “salary exempt” as set forth by California Labor Code § 515(a). Plaintiff was not allowed to make independent decisions. Plaintiff did not manage any employees of Defendant. He did not have authority to hire or fire employees. Further, Plaintiff did not have independent judgment or discretion in his job position. Plaintiff performed more hourly work than management work.

26. Defendant thus improperly classified Plaintiff as exempt from the wage and hour requirements set forth in the Labor Code and IWC Wage Order No. 7, because he did not qualify as exempt.

27. Because of this misclassification, Plaintiff suffered damages as a result of Defendant’s violation of IWC Wage Order No. 7, in an amount according to proof.

28. Based on Defendant’s conduct as alleged herein, Defendant is liable for damages and statutory penalties pursuant to Labor Code §226, Labor Code §218.5 and penalties pursuant to Labor Code §§203 and 206.

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SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order No. 7 By Plaintiff against Defendant and Does 1-100)

29. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

30. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 7, Defendant was required to compensate Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.

31. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee who had not been paid overtime compensation could recover the unpaid balance of the full amount of overtime wages due, including interest thereon, together with reasonable attorneys' fees and costs of suit.

32. California Labor Code section 1198 provides,
The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

33. Pursuant to IWC Wage Order No. 7-2001, § 3, "Employment beyond eight (8) hours in any workday is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday..."

34. California Labor Code section 558 provides in pertinent part:

1 (a) Any employer or other person acting on behalf of an employer who
2 violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the
4 Industrial Welfare Commission shall be subject to a civil penalty as
5 follows:

6 (1) For any initial violation, fifty dollars (\$50) for each underpaid
7 employee for each pay period for which the employee was underpaid in
8 addition to an amount sufficient to recover underpaid wages.

9 (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was
11 underpaid in addition to an amount sufficient to recover underpaid
12 wages.

13 (3) Wages recovered pursuant to this section shall be paid to the affected
14 employee...

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

17 35. Plaintiff worked 8 or more hours per day, 6 days per week. Throughout
18 Plaintiff's employment, Defendant failed and refused to properly pay overtime time
19 compensation to Plaintiff because Plaintiff was not paid time and one half. Overtime was paid
20 to Plaintiff by Defendant by dividing his \$100 salary by 8 hours (\$12.50) and multiplying that
21 number by the number of overtime hours Plaintiff worked. As a result, Plaintiff was not even
22 paid minimum wage for his overtime hours.

23 36. Plaintiff worked approximately 8 hours per week of overtime. Plaintiff was not
24 paid overtime that was due to him.

25 37. The foregoing overtime compensation is owed and unpaid. As a direct and
26 proximate result of Defendant's failure and refusal to pay overtime time, Plaintiff suffered
27 damages in the amount of at least \$129,392.64, according to proof at trial.

28 38. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime wages
against employers and those individuals acting in their behalf. Plaintiff requests that this Court
assess said penalty against Defendant in an amount to be proven at trial.

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39. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover his attorneys' fees, costs and interest.

THIRD CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order No. 7 – By Plaintiff against Defendant and Does 1 through 100)

40. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

41. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage... to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 7 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

42. Here, Plaintiff was not paid minimum wages due to Defendant's failure to afford Plaintiff compliant meal/rest breaks. Further, Defendant paid him a salary significantly below minimum wage given the number of hours he worked.

43. *Labor Code* § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

44. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor Code* § 1194. Where an employee, such as Plaintiffs are not paid for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for the time associated with

1 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
2 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
3 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
4 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
5 (N.D. Cal. 2016).

6 45. Plaintiff suffered and continued to suffer losses related to the use and
7 enjoyment of compensation due and owing to him as a direct result of Defendant's unlawful
8 acts and Labor Code violations in the amount of at least \$129,392.64, according to proof at
9 trial.

10 46. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
11 wages against employers and those individuals acting on their behalf. Plaintiff requests that
12 this Court assess said penalty against Defendant in an amount to be proven at trial.

13 47. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and
14 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendant
15 owe him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
16 according to proof.

17 **FOURTH CAUSE OF ACTION**

18 **(For Failure to Provide Meal Breaks in violation of Cal. Labor Code §226.7– By Plaintiff**
19 **Against Defendant and Does 1 through 100)**

20 48. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 49. California Labor Code §226.7(a) prohibits an employer from requiring an
23 employee to work during any meal period mandated by an applicable Industrial Wage Order.
24 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
25 employee to work during a meal or rest break or recovery period mandated pursuant to an
26 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
27 Commission..."

1 50. California Labor Code §1198 makes unlawful the employment of an employee
2 under conditions the IWC prohibits.

3 51. Wage Order No. 7 provides, in relevant part: "No employer shall employ any
4 person for a work period of more than five (5) hours without a meal period of not less than 30-
5 minutes, except that when a work period of not more than six (6) hours will complete the day's
6 work the meal period may be waived by mutual consent of the employer and the employee."

7 52. Wage Order No. 7 further provides, in relevant part: "Unless the employee is
8 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
9 duty' meal period and counted as time worked."

10 53. Section 512(a) of the California Labor Code provides, in relevant part, that:
11 An employer may not employ an employee for a work period of more than five
12 hours per day without providing the employee with a meal period of not less
13 than 30-minutes, except that if the total work period per day of the employee is
14 no more than six hours, the meal period may be waived by mutual consent of
15 both the employer and employee. An employer may not employ an employee for
16 a work period of more than 10 hours per day without providing the employee
17 with a second meal period of not less than 30-minutes, except that if the total
18 hours worked is no more than 12 hours, the second meal period may be waived
19 by mutual consent of the employer and the employee only if the first meal
20 period was not waived.

21 54. The Labor Code and Wage Order provisions cited above require California
22 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
23 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
24 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
25 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
26 the fifth hour of their shifts.

27 55. Plaintiff's meal breaks were afforded late after the fifth hour of his shift.

28 56. Defendant further violated IWC Wage Order No. 7 and Labor Code

1 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
2 of pay for each work day that the meal period was not provided, in an amount according to
3 proof. This amount remains owed and unpaid.

4 57. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
5 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
6 § 226.7(b).

7 58. As a direct and proximate result of PM's unlawful conduct as alleged herein,
8 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost
9 interest, in the amount of at least \$129,392.64, to be established at trial, and is entitled to
10 recover economic and statutory damages, attorneys' fees and penalties and other appropriate
11 relief due to PM's violations of the California Labor Code and IWC Wage Order No. 7.

12 **FIFTH CAUSE OF ACTION**

13 **(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7– By Plaintiff**
14 **Against Defendant and Does 1 through 100)**

15 59. Plaintiff realleges and incorporates by reference all of the allegations set forth in
16 this Complaint.

17 60. Labor Code § 226.7 and Wage Order No. 7 provide that employers shall
18 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
19 per four hours of work, or major fraction thereof.

20 61. Labor Code § 226.7 and Wage Order No. 7 provide that if an employer fails to
21 provide an employee with rest periods in accordance with those provisions, the employer shall
22 pay the employee one hour of pay at the employee's regular rate of compensation for each
23 workday that the rest periods were not so provided.

24 62. Defendant has intentionally and improperly not afforded any rest periods to
25 Plaintiff in violation of Labor Code § 226.7 and Wage Order No. 7.

26 63. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

27 64. At all times relevant hereto, Defendant failed to provide rest periods as required
28 by Labor Code § 226.7 and Wage Order No. 7.

65. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

SIXTH CAUSE OF ACTION

**(Waiting Time Penalties in Violation of Labor Code §226 - By Plaintiff Against Defendant
and Does 1 through 100)**

66. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

67. At all times relevant hereto, Defendant failed to issue payroll statements to Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did not properly and accurately itemize the number of hours Plaintiff worked at the effective regular rates of pay and the effective overtime rates of pay, minimum wage rates and premium pay for meal/rest breaks not compliant.

68. Defendant knowingly and intentionally failed to comply with *Labor Code* §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs expended calculating the actual hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

69. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

SEVENTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)

1 70. Plaintiff realleges and incorporates by reference all of the allegations set forth in
2 this Complaint.

3 71. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
4 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns or
5 is terminated from employment, unpaid wages are due and payable within 72 hours of
6 resignation or termination.

7 72. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
8 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
9 paid, not to exceed thirty days.

10 73. Plaintiff was discharged from Defendant's employ and Defendant willfully
11 failed to pay overtime, minimum wages, afford timely meal breaks, afford rest breaks and did
12 not pay him premium pay for meal/rest breaks not afforded.

13 74. Defendant terminated Plaintiff on February 11, 2025, yet failed to pay him
14 wages due to him.

15 75. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
16 he was not timely paid, not to exceed 30 days' wages.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **(Cal. Labor Code §2802 By Plaintiff Against Defendant and Does 1 through 100)**

20 76. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 77. Labor Code §2802 requires employers to indemnify employees for all necessary
23 expenditures incurred by employees in the discharge of their duties.

24 78. At all times relevant herein, Defendant was aware that Plaintiff was using his
25 personal vehicle, but failed to indemnify Plaintiff for all his business-related expenses,
26 including wear and tear expenses, in accordance with Labor Code §2802.

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79. As a result of Defendant's conduct, Plaintiff suffered damages in an amount, subject to proof, to the extent he was not reimbursed for all of his business-related expenses incurred in the discharge of his duties.

80. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of his unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

NINTH CAUSE OF ACTION

**(For Failure to Allow Inspection of Employment Records in Violation of Cal. Labor Code
§1198.5 By Plaintiff Against Defendant and Does 1 through 100)**

81. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

82. California Labor Code Section 1198.5 provides:

(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request to inspect the records. Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records,... later than 30 calendar days from the date the employer receives the request...

(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified I

this section... the current or former employee may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(1) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

83. Additionally, pursuant to Wage Order No. 7, at section 7 re: Records, employers are required to keep accurate payroll records on each employee, and such records must be made readily available for inspection by the employee upon reasonable request. The employer must also maintain accurate production records.

84. On or about March 7, 2025, Plaintiff's counsel issued a written request to PM for copies of his personnel records.

85. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff's hours worked, wage statements and compensation. Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his records.

86. As a direct result and consequence of Defendant's failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendant's violation of §1198.5.

TENTH CAUSE OF ACTION

(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code §17200 et. seq. – By Plaintiff Against Defendant and Does 1 through 100)

87. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

88. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair competition, which shall mean and include any "unlawful and unfair business practices."

1 89. Defendant's conduct as alleged herein has been and continues to be unfair,
2 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
3 affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5.
4 Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and
5 therefore has standing to bring this suit for restitution.

6 90. Paying overtime, minimum wages, affording employees' compliant meal/rest
7 breaks and paying premium pay for failure to afford meal/rest breaks and reimbursing business
8 expenses, are fundamental public policies of the State of California. It is also the public policy
9 of this State to enforce minimum labor standards, to ensure that employees are not required or
10 permitted to work under substandard and unlawful conditions, and to protect those employers
11 who comply with the law from losing competitive advantage to other employers who fail to
12 comply with labor standards and requirements.

13 91. Defendant failed to pay overtime, minimum wages, afford compliant meal/rest
14 breaks, and reimburse expenses to Plaintiff. Further, Defendant failed to provide Plaintiff with
15 his personnel records.

16 92. Through the conduct alleged herein, Defendant acted contrary to these public
17 policies and has thus engaged in unlawful and/or unfair business practices in violation of
18 Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits, and
19 privileges guaranteed to employees under California law.

20 93. Defendant regularly and routinely violated the following statutes and regulations
21 with respect to Plaintiff:

- 22
- 23 (a) Willful misclassification as exempt (Wage Order No. 7);
 - 24 (b) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No.
25 7 as amended (failure to pay overtime);
 - 26 (c) *Labor Code* § 1197 and Wage Order No. 7 (failure to pay minimum
27 wages);
 - 28 (d) *Labor Code* §226 (failure to afford meal/rest breaks);

- 1 (e) *Labor Code* § 226 (failure to provide accurate wage statements to
2 employees at the time of payment of wages);
3 (f) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
4 (g) *Labor Code* § 2802 (failure to reimburse business expenses); and
5 (h) *Labor Code* § 1198.5 (failure to allow inspection of employment
6 records).

7
8 94. By engaging in these business practices, which are unfair business practices
9 within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, Defendant harmed Plaintiff and
10 gained an unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is
11 entitled to obtain restitution of these funds.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
14 and against Defendant, as follows:

- 15 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff, in
16 the amount of at least \$129,392.64, according to proof;
- 17 2. For compensatory damages in the amount of unpaid minimum wages due to
18 Plaintiff, in the amount of at least \$129,392.64, according to proof;
- 19 3. For compensatory damages for lost wages and employment benefits, in the
20 amount of at least \$129,392.64, according to proof;
- 21 4. For compensatory damages in the amount of Plaintiff's out of pocket vehicle
22 expenses and/or reimbursement of monies incurred while performing Defendant's business-
23 related duties, plus interest, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
24 §2802(c);
- 25 5. For prejudgment interest accrued on all due and unpaid overtime and minimum
26 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
27 1194(a), according to proof;
- 28 6. For an award of consequential damages, according to proof;

1 7. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
2 workday that a meal and/or rest period was not provided;

3 8. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

4 9. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
5 §203, in an amount equal to his respective daily rates of pay at the time of termination or
6 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
7 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
8 days' pay, according to proof;

9 10. For specific relief enforcing waiting time penalties of 30 days of per diem wages
10 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

11 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 226.7, according to
12 proof;

13 12. For reasonable costs, including attorneys' fees, in an amount according to proof
14 pursuant to *Cal. Labor Code* §§218.5, 1198.5, 2802, and/or *Cal. Code Civ. Proc.* §1021.5;

15 13. For injunctive relief ordering the continuing unfair business acts and practices to
16 cease, as the Court deems just and proper;

17 14. For other injunctive relief ordering Defendant to notify Plaintiff that he has not
18 been paid the proper amounts in accordance with California law;

19 15. For injunctive relief requiring Defendant to comply with Labor Code
20 §1198.5(b)(1); and

21 16. For such other and further relief as the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff Marcos Tamayo Hernandez hereby respectfully requests a trial by jury for all
24 claims and issues raised in his Complaint that may be entitled to a jury trial.

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LIPELES LAW GROUP, APC

Date: March 7, 2025

By: Vanya Khanna
Vanya Khanna
Attorneys for Plaintiff
Marcos Tamayo Hernandez