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on behalf of himself and others similarly situated

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Y. Modica ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ALEX HERNANDEZ, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

535 5TH, LLC dba RUSTIC ROOT, a
California limited liability company; RMD
GROUP, LLC, a California limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU020902C

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et*
seq. and 246;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5;
9. Penalties Pursuant to Labor Code § 203; and
10. Violation of Business & Professions Code §
17200 *et seq.*;
11. Penalties Pursuant to Labor Code § 2699, *et*
seq.

DEMAND FOR JURY TRIAL

1 Plaintiff ALEX HERNANDEZ, (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants 535 5TH, LLC
8 dba RUSTIC ROOT; RMD GROUP, LLC; and DOES 1 through 50 (all defendants being
9 collectively referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of
10 them, violated various provisions of the California Labor Code, relevant orders of the Industrial
11 Welfare Commission (IWC) and California Business & Professions Code, and seeks redress
12 therefore.

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

24 3. Defendants failed to provide Plaintiff and Employees with lawful meal and rest
25 periods, as employees were not provided with the opportunity to take timely, uninterrupted, and
26 duty-free meal and rest periods as required by the Labor Code. Defendants also failed to pay all
27 wages due and owing for work performed off-the-clock. Defendants thus failed to pay Plaintiff
28 and the Class members for all hours worked, and provided them with inaccurate wage statements

1 that prevented Plaintiff and the Class from learning of these unlawful pay practices.

2 **THE PARTIES**

3 **A. The Plaintiff**

4 4. Plaintiff ALEX HERNANDEZ has resided in California and during the time period
5 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within
6 the State of California.

7 **B. The Defendants**

8 5. Defendant 535 5TH, LLC dba RUSTIC ROOT is a California limited liability
9 company, with its principle executive offices in San Diego, California and was Plaintiff's jobsite
10 during the relevant time period. 535 5TH, LLC dba RUSTIC ROOT lists a California address with
11 the California Secretary of State, and employs Plaintiff and the Class members in San Diego
12 County, including at Defendants' offices and facilities in San Diego, California, and throughout
13 California and conducts business throughout California.

14 6. Defendant RMD GROUP, LLC, is a California limited liability company and has
15 been listed as the employer on Plaintiff's wage statements during the relevant time period. RMD
16 GROUP, LLC lists a California address with the California Secretary of State and employs
17 Plaintiff and the Class members in San Diego County, including at Defendants' offices and
18 facilities in San Diego, California, and throughout California and conducts business throughout
19 California.

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

28 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in

1 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
2 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
3 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
4 all respects as the employers or joint employers of Employees. Defendants, and each of them,
5 exercised control over the wages, hours or working conditions of Employees, or suffered or
6 permitted Employees to work, or engaged, thereby creating a common law employment
7 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
8 employed Employees.

9 **JURISDICTION AND VENUE**

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

18 **FACTUAL BACKGROUND**

19 10. The Employees who comprise the Class and Collective, including Plaintiff, are
20 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
21 Employees who work in nonexempt positions at the direction of Defendants in the State of
22 California. Plaintiff and the Class members were either not paid by Defendants for all hours
23 worked or were not paid at the appropriate minimum, regular, and overtime rates. Specifically,
24 Plaintiff and Employees were not paid for the time that they worked off-the-clock by waiting in
25 line to clock in after their meal periods and calling Defendants to see if they were scheduled to
26 work that day or the following day. Defendants failed to pay Plaintiff and the Class members all
27 wages due and owing, failed to provide meal and rest breaks, and failed to furnish accurate wage
28 statements, all in violation of various provisions of the California Labor Code and applicable

1 Wage Orders. Additionally, Defendants paid Plaintiff and Employees nondiscretionary
2 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon
3 information and belief, Defendants failed to incorporate all remunerations, including
4 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses,
5 into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate.
6 Therefore, during times when Plaintiff and Employees worked overtime and received
7 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses,
8 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

9 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
10 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
11 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
12 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
13 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
14 regular rate of pay for purposes of calculating sick pay. Therefore, during times when Plaintiff and
15 Employees worked overtime and received nondiscretionary commissions, incentive pay, shift
16 differentials, and/or nondiscretionary bonuses, Defendants failed to pay all sick pay by paying a
17 lower overtime rate than required.

18 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the
19 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
20 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
21 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
22 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
23 regular rate of pay for purposes of calculating vacation pay. Therefore, during times when Plaintiff
24 and Employees worked overtime and received nondiscretionary commissions, incentive pay, shift
25 differentials, and/or nondiscretionary bonuses, Defendants failed to pay all vacation pay by paying
26 a lower overtime rate than required.

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1 13. During the course of Plaintiff and the Class members' employment with Defendants,
2 they were not paid all wages they were owed, including for all work performed and for all overtime
3 hours worked and were forced to work during their meal and rest breaks.

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

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

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

1 by California Law.

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

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

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

21 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
22 continuing to the present, Defendants have consistently failed to provide Employees with timely,
23 accurate, and itemized wage statements, in writing showing the correct rate of pay and total hours
24 worked, as required by California wage-and-hour laws. The wage statements provided to
25 Employees were confusing as failed to include the above requirements enumerated above.
26 Employees’ wage statements did not include: the total hours worked in violation of Labor Code §
27 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each such rate in violation of Labor Code

1 § 226(a)(9). The wage statements provided to Employees were confusing and required Employees
2 to engage in discovery and refer to outside sources to verify whether their pay was correct and
3 potentially resulting in a miscalculation by the Employees. Moreover, the wage statements given
4 to Employees by Defendants failed to accurately account for wages, overtime, all of which
5 Defendants knew or reasonably should have known were owed to Employees, as alleged
6 hereinabove.

7 21. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
8 continuing to the present, Defendants have consistently failed to keep accurate time and wage
9 records as required by California wage-and-hour laws.

10 22. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
11 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
12 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
13 required by California wage-and-hour laws.

14 23. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
15 Code §§ 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 245 *et seq.* 246, 510, 512,
16 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1199, 2698, 2699, *et seq.*, and
17 2802.

18 24. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
19 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
20 enjoyed from their violations of Labor Code.

21 **CLASS ALLEGATIONS**

22 25. Plaintiff brings this class action on behalf of himself and all others similarly
23 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as
24 follows: all individuals employed by Defendants, at any time within four (4) years of the filing of
25 this lawsuit, and have been employed by Defendants within the State of California.

26 26. Further, Plaintiff seeks to represent the following Subclasses composed of and
27 defined as follows:

28 a. Subclass 1. Minimum Wages Subclass. All Class members who were not

1 compensated for all hours worked for Defendants at the applicable minimum wage.

2 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
3 compensated for all hours worked for Defendants at the required rates of pay, including for all
4 hours worked in excess of eight in a day and/or forty in a week.

5 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
6 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
7 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

8 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
9 Defendants' policy and/or practice of failing to authorize and permit Employees to take
10 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
11 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

12 e. Subclass 5. Vacation Wages Subclass. All Class members who were not
13 compensated at the Employee's regular rate of pay for their vacation wages.

14 f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at
15 the Employee's regular rate of pay for their sick pay wages.

16 g. Subclass 7. Wage Statement Subclass. All Class members who, within the
17 applicable limitations period, were not provided with accurate itemized wage statements.

18 h. Subclass 8. Payroll Records Subclass. All Class members who were subject to
19 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
20 by California wage-and-hour laws.

21 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
22 applicable limitations period, either voluntarily or involuntarily separated from their employment
23 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
24 termination.

25 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
26 result of Defendants' business acts and practices, to the extent such acts and practices are found to
27 be unlawful, deceptive, and/or unfair.

28 27. Plaintiff reserves the right under California Rule of Court 3.765 to amend or

1 modify the class description with greater particularity or further division into subclasses or
2 limitation to particular issues.

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

6 **A. Numerosity**

7 29. The potential members of the class as defined are so numerous that joinder of all
8 the member of the class is impracticable. While the precise number of class member has not been
9 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
10 time period relevant to this lawsuit, employed more than 100 individuals were employed by
11 Defendant's within the State of California.

12 30. Accounting for employee turnover during the relevant time period increases this
13 number substantially. Plaintiff alleges that Defendants' employment records will provide
14 information as to the number and location of all class members.

15 **B. Commonality**

16 31. There are questions of law and fact common to the class that predominate over any
17 questions affecting only individual class members. These common questions of law and fact
18 include:

- 19 a. Whether Defendants failed to pay Employees minimum wages;
- 20 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 21 c. Whether Defendants failed to pay Employees overtime as required under Labor
22 Code § 510;
- 23 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
24 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
25 premium pay in lieu thereof;
- 26 e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage
27 Orders, by failing to provide Employees with requisite rest breaks or premium pay
28 in lieu thereof;

- 1 f. Whether Defendants failed to pay Employees vacation wages as required under
2 Labor Code § 227.3;
- 3 g. Whether Defendants failed to pay Employees sick pay as required under Labor
4 Code § 245;
- 5 h. Whether Defendants violated Labor Code § 226(a);
- 6 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 7 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
8 wages and compensation due and owing at the time of termination of employment;
- 9 k. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 10 l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 11 m. Whether Employees are entitled to equitable relief pursuant to Business and
12 Professions Code § 17200 *et seq.*

13 **C. Typicality**

14 32. The claims of the named plaintiff are typical of those of the other Employees.
15 Employees all sustained injuries and damages arising out of and caused by Defendants' common
16 course of conducts in violation of statutes, as well as regulations that have the force and effect of
17 law, as alleged herein.

18 **D. Adequacy of Representation**

19 33. Plaintiff will fairly and adequately represent and protect the interest of Employees.
20 Counsel who represents Employees are experienced and competent in litigating employment class
21 actions.

22 **E. Superiority of Class Action**

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

28 35. Class action treatment will allow those persons similarly situated to litigate their

claims in the manner that is most efficient and economical for the parties and the judicial system.
Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

36. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

37. Defendants had a consistent policy and/or practice of failing to pay Employees minimum wages for all hours worked. Employees would work hours and not receive wages. Including as alleged above in connection with working during meal breaks, working off-the-clock by waiting in line to clock in after their meal periods and calling Defendants to see if they were scheduled to work that day or the following day. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Defendants thus regularly failed to pay minimum wages to Plaintiff and Class members. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

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

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

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

9 42. California Labor Code § 1194.2 also provides for the following remedies:

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

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

18 44. Wherefore, Employees are entitled to recover the unpaid minimum wages
19 (including double minimum wages), liquidated damages in an amount equal to the minimum
20 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
21 to California Labor Code § 1194(a).

22 **SECOND CAUSE OF ACTION**

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

24 **(Against All Defendants)**

25 45. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 46. By their conduct, as set forth herein, Defendants violated California Labor Code §
28 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
(a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
(8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not

1 paying Employees wages for all hours worked., including time spend working off-the-clock by
2 by waiting in line to clock in after their meal periods and calling Defendants to see if they were
3 scheduled to work that day or the following day. Employees regularly worked over 8 hours on a
4 given day without receiving overtime compensation.

5 47. Furthermore, on information and belief, Defendants did not pay Plaintiff and
6 Employees the correct overtime rate for the recorded overtime hours that they generated. In
7 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
8 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon
9 information and belief, Defendants failed to incorporate all remunerations, including
10 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
11 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime
12 wage rate.

13 48. Therefore, during times when Plaintiff and Employees worked overtime and
14 received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
15 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than
16 required.

17 49. Defendants' failure to pay compensation in a timely fashion also constituted a
18 violation of California Labor Code § 204, which requires that all wages shall be paid
19 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
20 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
21 and overtime compensation earned by Employees. Each such failure to make a timely payment of
22 compensation to Employees constitutes a separate violation of California Labor Code § 204.

23 50. Employees have been damaged by these violations of California Labor Code §§
24 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

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

1 **THIRD CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 52. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

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

11 54. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Furthermore, Employees were regularly required to work for more than
14 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal period
15 as required by law.

16 55. Moreover, Defendants failed to compensate Employees for each meal period not
17 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
18 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
19 employee a meal period in accordance with this section, the employer shall pay the employee one
20 hour of pay at the employee's regular rate of compensation for each workday that the meal period
21 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
22 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
23 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
24 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
25 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

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

1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 57. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

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

9 59. Defendants failed to provide Employees with timely rest breaks of not less than ten
10 (10) minutes for each consecutive four (4) hour shift.

11 60. Moreover, Defendants failed to compensate Employees for each rest break not
12 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
13 Wage Orders, which provide that, if an employer fails to provide an employee a rest break in
14 accordance with this section, the employer shall pay the employee one hour of pay at the
15 employee's regular rate of compensation for each workday that the rest break is not provided.
16 Defendants failed to compensate the Employees in the Class for each rest break not provided or
17 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
18 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
19 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
20 or by otherwise incorrectly calculating the regular rate.

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

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PAY VACATION WAGES**

26 **(Against All Defendants)**

27 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

63. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served.

64. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

65. Additionally, Defendants failed to pay its former Employees all accrued vacation time upon their termination.

66. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code § 227.3.

SIXTH CAUSE OF ACTION

FAILURE TO COMPLY WITH LABOR CODE §§ 245 *ET SEQ.* AND 246

(Against All Defendants)

67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

68. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time to Employees, including at the amount, terms, and rate of compensation set forth in said law. At times relevant, Defendants have failed compute the amount due for paid sick time in conformance with the pay calculation under California Labor Code § 246(1).

69. Defendants paid nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than calculating the amount of paid sick time due when sick time is used according to the requirements set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower rate, in violation of the law.

70. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code §§ 245 *et seq.* and 246.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

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

73. Defendants failed to provide Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by Defendants, failed to include the above requirements enumerated above. Employees' wage statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9). Additionally, Defendants failed in their affirmative obligation to keep accurate records of the correct overtime wages based on proper regular rate calculations that included nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the total amount of compensation of their Employees. The wage statements provided to Employees were confusing and required Employees to engage in discovery and refer to outside sources to verify whether their pay was correct and potentially resulting in a miscalculation by the Employees. Moreover, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, all of which Defendants knew or reasonably should have known were owed to Employees, as alleged hereinabove.

74. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),

1 Employees suffered injuries, including among other things confusion over whether they received
2 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
3 forcing them to make mathematical computations to analyze whether the wages paid in fact
4 compensated them correctly for all hours worked.

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

10 **EIGHTH CAUSE OF ACTION**
11 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**
12 **AND 1174.5**
13 **(Against All Defendants)**

14 76. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
15 full herein.

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

20 78. During the course of Plaintiff's and Employees' employment, Defendants
21 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
22 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
23 overtime, and premium pay as discussed above.

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

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NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

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

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

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

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

TENTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.*
(Against All Defendants)

85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

86. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

87. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

1 88. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
2 business practices.

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

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

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

18 92. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
19 overtime, etc., either knew or in the exercise of reasonable care should have known that their
20 conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200
21 *et seq.*

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

24 94. Unless restrained by this Court, Defendants will continue to engage in such
25 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
26 should make such orders or judgments, including the appointment of a receiver, as may be
27 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
28 deceptive practice prohibited by the Business & Professions Code, including but not limited to the

1 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
2 have unlawfully failed to pay.

3 **ELEVENTH CAUSE OF ACTION**
4 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**
5 **(Against All Defendants)**

6 95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 96. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
9 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
10 alleged violators, Defendants.

11 97. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
12 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
13 penalty provisions, without limitation, based on the following California Labor Code sections:
14 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 227.3, 245 *et seq.* 246, 510, 512, 558, 558.1,
15 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

16 98. The penalties shall be allocated as follows: 65% to the Labor and Workforce
17 Development Agency ("LWDA") and 35% to the affected employee.

18 99. Employees also seek any and all penalties and remedies set forth in Labor Code §
19 558, which states:

20 (a) Any employer or other person acting on behalf of an employer who
21 violates, or causes to be violated, a section of this chapter or any provision
22 regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial
24 violation, fifty dollars (\$50) for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount
26 sufficient to recover underpaid wages. (2) For each subsequent violation,
one hundred dollars (\$100) for each underpaid employee for each pay
period for which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages. (3) Wages recovered pursuant to this
section shall be paid to the affected employee.

27 (b) If upon inspection or investigation the Labor Commissioner determines that
28 a person had paid or caused to be paid a wage for overtime work in
violation of any provision of this chapter, or any provision regulating hours
and days of work in any order of the Industrial Welfare Commission, the

1 Labor Commissioner may issue a citation. The procedures for issuing,
2 contesting, and enforcing judgments for citations or civil penalties issued by
3 the Labor Commissioner for a violation of this chapter shall be the same as
those set out in Section 1197.1.

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

6 100. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the amount of two hundred and fifty dollars
8 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
9 employee for each violation in a subsequent citation, for which the employer fails to provide the
10 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
11 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such
12 penalties on.

13 101. seeks such penalties on.

14 102. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
15 LWDA and Defendants postmarked on April 16, 2025. The LWDA has not provided notice of its
16 intent to investigate the alleged violations within 65 calendar days of the postmark date of the
17 letters.

18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff prays for the following relief:

- 20 1. For an order certifying this action as a class action;
- 21 2. For compensatory damages in the amount of the unpaid minimum wages for work
22 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
23 the filing of this action, as may be proven;
- 24 3. For liquidated damages in the amount equal to the unpaid minimum wage and
25 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 26 4. For compensatory damages in the amount of the hourly wage made by Employees
27 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
28 years prior to the filing of this action, as may be proven;

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

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

6 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

7 8. For penalties pursuant to Labor Code § 227.3, as may be proven;

8 9. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;

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

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

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

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

15 14. For an order enjoining Defendants and their agents, servants, and employees, and
16 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
17 duties adumbrated in this Complaint;

18 15. For all general, special, and incidental damages as may be proven;

19 16. For an award of pre-judgment and post-judgment interest;

20 17. For an award providing for the payment of the costs of this suit;

21 18. For an award of attorneys' fees; and

22 19. For such other and further relief as this Court may deem proper and just.

23 DATED: June 20, 2025

D.LAW, INC.

24
25 By 
26 Emil Davtyan
27 David Yeremian
28 Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
ALEX HERNANDEZ,
and the putative class

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

4
5 DATED: June 20, 2025

D.LAW, INC.

6 By



7 Emil Davtyan
8 David Yermian
9 Roman Shkodnik
10 Emma Geesaman
11 Attorneys for Plaintiff
12 ALEX HERNANDEZ,
13 and the putative class
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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 450 N Brand Blvd., Suite 805, Glendale, CA 91203.

RMD GROUP, LLC
Michael Georgopoulos, Agent for Service
614 Fifth Ave., Suite A
San Diego, CA 92101

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

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

Executed on June 20, 2025, at Glendale, California.

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