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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BIDKAR SEQUEIRA, as an individual and on behalf of all others similarly situated, Plaintiff, vs. MOBILE CLEAR SHIELD, LLC, a California limited liability company; and DOES 1 through 100, inclusive, Defendants.	Case No.: 22STCV31788 **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:** **(1) FAILURE TO PAY ALL OVERTIME WAGES OWED (LABOR CODE §§ 204, 510, 558, 1194, 1198)** **(2) FAILURE TO PAY ALL MINIMUM WAGES OWED (LABOR CODE §§ 226.2, 1194, 1194.2, 1197);** **(3) FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512);** **(4) FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS (LABOR CODE §§ 226.2, 226.7, 516);** **(5) UNLAWFUL DEDUCTIONS FROM WAGES (LABOR CODE § 221);** **(6) FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**

(7) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);

(8) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*);

(9) FAILURE TO PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);

(10) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq*.)

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiffs Bidkar Sequeira and Juan Salas ("Plaintiffs"), on behalf of themselves and all others similarly situated, hereby bring this Second Amended Class and Representative Action Complaint ("SAC") against Mobile Clear Shield, LLC, a California limited liability company and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring this SAC for recovery of unpaid wages and penalties under California Business & Professions Code § 17200 *et. seq*., Labor Code §§ 201-204, 221, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"), in addition to seeking declaratory relief and restitution. This SAC is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s) within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein, Plaintiffs were and currently are California residents. During the four years immediately preceding the filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non-exempt employees. Plaintiffs were, and are, victims of Defendants' policies and/or practices complained of herein, lost money and/or property, and have been deprived of the rights guaranteed by Labor Code §§ 201-204, 221, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.* ("Unfair Competition Law"); and Wage Order 4, which sets employment standards for the occupations in the professional, technical, clerical, mechanical and similar

occupations, which includes the industry in which Plaintiffs worked for Defendants.

4. Plaintiffs are informed and believe, and based thereon allege, that during the four years preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do) business by being a company engaged in automobile paint protection, including installation of scratch protectors on vehicles. Defendants employed Plaintiffs and other, similarly-situated individuals within, among other counties, Los Angeles County and the state of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this SAC when such true names and capacities are discovered. Plaintiffs are informed, and believe, and based thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and the Classes (as defined in Paragraph 22) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all members of the Classes.

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GENERAL FACTUAL ALLEGATIONS

9. Plaintiff Sequeira, a current employee, has been employed by Defendants from approximately 2019 through the present as a non-exempt employee. During his employment, Plaintiff worked as an installer who was paid on a piece-rate basis.

10. Plaintiff Salas worked as an hourly, non-exempt employee for Defendants from approximately February 2020 through approximately July 2021. He worked as an installer, was required to follow Defendant's wage and hour policies and practices and was paid, at least in part, on a piece-rate basis.

11. During their employment with Defendants, Plaintiffs and other non-exempt employees were paid on a piece-rate basis, whereby Plaintiffs and other non-exempt employees were paid a certain rate per certain work units performed. However, Plaintiffs are informed and believe, and based thereon allege, that they were never separately compensated at least at the minimum wage for time spent working on tasks which were not compensated on a piece-rate basis, including without limitation hours spent cleaning and maintaining his tools, waiting for work, performing administrative tasks, waiting for customers, and taking rest breaks (*e.g.*, non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("*DTLA*") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer....''); Lab. Code §226.2.

12. Further, because Plaintiffs and other non-exempt employees who were paid, at least in part, on a piece rate basis often worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendants to compensate them for all their work time due to their unlawful piece rate compensation practices caused them to be deprived of all overtimes wages owed.

13. Plaintiffs further contend that Defendants did not properly track the time worked by Plaintiffs and other non-exempt employees such that they were not compensated for all hours worked which were not tracked, and thus deprived of minimum wages owed for such time. Further, due to this timekeeping problem, when Plaintiffs and other non-exempt employees worked in excess of 8 hours in a day or 40 hours in a week, Plaintiffs were also deprived of all overtimes wages owed. More specifically, although Plaintiffs often worked in excess of 80 hours in a day, they were instructed that they were only

permitted to report a maximum of 8.0 hours in a shift.

14. While working for Defendants, Plaintiffs and other non-exempt employees often worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Plaintiffs and other non-exempt employees received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiffs and other non-exempt employees, Defendants' policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Plaintiffs and other non-exempt employees to be underpaid all of their required overtime wages. As a result, Defendants failed to pay Plaintiffs and other non-exempt employees all required overtime wages.

15. Throughout their employment with Defendants, Plaintiffs were not provided all required meal periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties and the work demands imposed by Defendants, Plaintiffs were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or were at least 30 minutes in length. This policy and practice of Defendants not providing lawful meal periods to Plaintiffs and/or requiring Plaintiffs and other non-exempt employees to take a meal period after the end of the fifth hour of work or that was less than 30 minutes in length violates California law. Further, when Plaintiffs worked in excess of 10.0 hours per day, Defendants failed to provide them with a second meal period that was at least 30 minutes in length, further violating California law.

16. Although Plaintiffs were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiffs with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Plaintiffs and their other

non-exempt employees.

17. Plaintiffs were also not authorized and permitted to take all legally required and properly paid rest periods due to Defendants' unlawful rest period policies and practices. Specifically, due to heavy work demands, Plaintiffs were not authorized to take required rest periods. Moreover, Plaintiffs worked shifts in excess of 3.5 hours, and was never provided with a lawfully paid rest period for every 4-hour period worked, or major fraction thereof, because Defendants' piece-rate compensation plan failed to separately and/or properly compensate Plaintiffs for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."); Lab. Code §226.2. As a result, Plaintiffs were not paid at least the minimum wage for all hours worked as well as all compensation owed pursuant to Labor Code section 226.2, and was deprived of all rest period premium payments.

18. On those occasions when Plaintiffs were not authorized and permitted to take all legally-compliant paid rest periods to which they were entitled, Defendants failed to compensate Plaintiffs with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

19. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiffs. Additionally, the wage statements issued by Defendants independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i) total hours worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii) the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period; (iv) list of deductions; and (v) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

20. Defendants also failed to reimburse Plaintiffs and other non-exempt employees who were paid, at least in part, on a piece rate basis for necessary business expenses incurred throughout the relevant

time period. Specifically, Defendants did not reimburse Plaintiffs for, among other things, expenses related to the use of a personal vehicle. Despite these requirements, Defendants did not reimburse Plaintiffs for incurring these necessary business expenses in violation of California law.

21. As a further result of Defendants' failure to pay all minimum and overtime wages, and failure to pay all meal and rest period premium wages, Defendants failed to pay all wages owed to former employees upon separation of their employment with Defendants.

CLASS ACTION ALLEGATIONS

22. **Class Definitions**: Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of Defendants' current and former employees in California who they classified as non-exempt, who worked in excess of 8 hours in a work day and/or in excess of 40 hours in a work week, and who were paid, at least in part, on a piece-rate basis during the four years preceding the filing of this lawsuit through the present.

b. The Minimum Wage Class consists of all Defendants' current and former employees in California who they classified as non-exempt and who were paid, at least in part, on a piece-rate basis, during the four years preceding the filing of this lawsuit through the present.

c. The Meal Period Class consists of all of Defendants' current and former employees in California who they classified as non-exempt, who were paid, at least in part, on a piece-rate basis, and who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.

d. The Rest Period Class consists of all of Defendants' current and former employees in California who they classified as non-exempt, who were paid, at least in part, on a piece-rate basis, and worked at least one shift of 3.5 hours or more during the four years immediately preceding the filing of the lawsuit through the present.

e. The Unlawful Wage Deductions Class consists of all Defendants' current and former employees in California who they classified as non-exempt and who were paid, at least in part, on a piece-rate basis and had amounts charged and/or deducted from their wages, during the four years preceding the filing of this lawsuit through the present.

f. The Expense Reimbursement Class consists of all of Defendants' current and former employees in California who they classified as non-exempt, who were paid, at least in part, on a piece-rate basis, and who incurred expenses in the discharge of their duties, during the four years immediately preceding the filing of the lawsuit through the present.

g. The Wage Statement Class consists of all members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) Unlawful Wage Deductions Class, during the one year immediately preceding the filing of the lawsuit through the present.

h. The Waiting Time Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Unlawful Wage Deductions Class; and/or (vi) Expense Reimbursement Class, and who separated from employment a with Defendants during the three years immediately preceding the filing of the lawsuit through the present.

i. The UCL Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Unlawful Wage Deductions Class; (vi) Wage Statement Class); (vii) Waiting Time Penalty Class; and/or (viii) Expense Reimbursement Class, during the four years immediately preceding the filing of the lawsuit through the present.

23. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

24. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the members of the Classes could number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

25. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest**: There are common questions of law and fact as to Plaintiffs and all other similarly situated individuals, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages, and/or overtime wages at the regular rate to members of the Overtime Class and Minimum Wage Class, pursuant to Labor Code §§ 204, 226.2, 510, 558, 1194, 1194.2, 1197, 1197.1 and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iii. Whether Defendants authorized and permitted all legally compliant and properly compensated rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.2, 226.7 and 516;

iv. Whether it was necessary for members of the Expense Reimbursement Class to incur expenses to perform and discharge their job duties, and whether Defendants knew or should have known of said incurring of such business expenses;

v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code §§ 226, 226.2 and 226.3;

vi. Whether Defendant unlawfully deducted wages from members of the Unlawful Wage Deduction Class in violation of Labor Code section 221;

vii. Whether Defendants properly paid all wages upon separation of employment to members of the Waiting Time Class pursuant to Labor Code §§ 201-203; and

viii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

26. **Predominance of Common Questions**: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping policies/practices, piece-rate

compensation, minimum wage payment, overtime wage payment, meal and rest period policies/practices, expense reimbursement policies/practices, wage deduction practices, and wage statement practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

27. **Typicality**: The claims of Plaintiffs are typical of the claims of the Classes because Plaintiffs were employed by Defendants as non-exempt employees paid, at least in part, on a piece-rate basis, in California during the statute(s) of limitations period applicable to each cause of action pled in the SAC. As alleged herein, Plaintiffs, like the members of the Classes, were not provided all legally required minimum wages and overtime wages, were not provided with all required meal periods, were not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages when they were not provided compliant meal and rest periods, had wages deducted, were not reimbursed for necessarily incurred business expenses, and were not provided with accurate, itemized wage statements.

28. **Adequacy of Representation**: Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

29. **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual

plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 22 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES OWED

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

30. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate Plaintiffs and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 4. Labor Code § 510 and Wage Order 4, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 4, Section

3 also require an employer to pay an employee double the employee's regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiffs and the members of the Overtime Class at one and one-half their regular rate of pay for such hours.

33. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiffs and the members of the Overtime Class in a civil action for the unpaid amount of overtime premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES OWED

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

34. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

35. This cause of action is brought pursuant to Labor Code §§ 204, 226.2, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked, and provide a private right of action for the failure to pay all minimum wage compensation for all work performed.

36. At all times relevant herein, Defendants were required to properly compensate Plaintiffs and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code §§ 226.2, 1194, 1197 and 1198, and Wage Order 4. Wage Order 4, Section 4 requires an employer to pay to every employee on the established payday for the period involved not less than the applicable minimum wage for all hours worked in the payroll period. Defendants caused Plaintiffs and the members of the Minimum Wage Class to work hours in a workweek but did not properly compensate Plaintiffs and the members Minimum Wage Class at least minimum wages for such hours.

37. At all times relevant herein, Defendants lacked good faith and had no reasonable grounds for believing that their practices in failing to pay all minimum wages owed at the applicable rate was not

a violation of any provision of the Labor Code relating to minimum wage, or an order of the Industrial Welfare Commission. Defendants, therefore, in addition to owing minimum wages to Plaintiffs and the members of the Minimum Wage Class, also owe liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

38. The foregoing practices and policies are unlawful and create entitlement to recovery by Plaintiffs and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

39. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

40. Plaintiffs are informed and believe, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California including Plaintiffs and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 4, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and 512.

41. As a result, Defendants are responsible for paying premium compensation for meal period violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

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FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

42. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

43. Wage Order 4, § 12 and California Labor Code §§ 226.2, 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

44. As alleged herein, Defendants failed to authorize and permit Plaintiffs and members of the Rest Period Class to take all required and properly paid rest periods.

45. The foregoing violations create an entitlement to recovery by Plaintiffs and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing and compensation required under Labor Code sections 226.2 and 226.7 for rest periods, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.2, 226.7, 516, 558, Wage Order 4, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

UNLAWFUL DEDUCTIONS FROM WAGES OWED

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

46. Plaintiffs re-allege and incorporates by reference all previous paragraphs as though fully set forth herein.

47. This cause of action is brought pursuant to Labor Code § 221 which provide 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."

48. As a matter of practice and policy, Defendants regularly deducted from the wages owed to Plaintiffs and members of the Unlawful Wage Deductions Class to cover various work-related expenses incurred in the direct discharge of their job duties.

49. Defendants knew or should have known that it is unlawful to deduct from wages owed to Plaintiffs and members of the Unlawful Wage Deductions Class.

50. As a proximate result of Defendants' policies and/or practices in violation of Labor Code § 221, Plaintiffs and members of the Unlawful Wage Deductions Class were damaged in sums, which will be shown according to proof.

51. Plaintiffs and members of the Unlawful Wage Deductions Class are entitled to attorneys' fees and costs of suit, and interest and penalties for bringing this action.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

52. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

53. Plaintiffs are informed and believe, and based thereon allege, that Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiffs and the members of the Wage Statement with accurate, itemized wage statements that included among other requirements, total hours worked during the pay period, the number of piece-rate units earned and any applicable piece rate, the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period, the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period, and meal and rest period premium wages, all in violation of Labor Code §§ 226 *et seq*. and 226.2

54. Defendants' failures in furnishing Plaintiffs and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

55. Defendants' failures create an entitlement to recovery by Plaintiffs and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code §§ 226 *et seq*. and 226.2, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq*.

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<u>SEVENTH CAUSE OF ACTION</u>

FAILURE TO REIMBURSE BUSINESS EXPENSES

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

56. Plaintiffs re-allege and incorporate by reference all previous paragraphs as though fully set forth herein.

57. It was necessary and at the obedience and/or direction of Defendants for Plaintiffs and members of the Expense Reimbursement Class to incur expenses in the direct discharge of their job duties, including but certainly not limited to expenses related to the use of a personal vehicle. It was also necessary for members of the Expense Reimbursement Class to necessarily incur other business expenses in the direct discharge of their duties.

58. Defendants knew or should have known that Plaintiffs and members of the Expense Reimbursement Class necessarily incurred expenses as part of the discharge of their duties at Defendants' direction, and also incurred other business expenses.

59. Although Plaintiffs and members of the Expense Reimbursement Class incurred these expenses in the direct discharge of their job duties, Defendants did not reimburse these employees for such necessary work expenditures during the four years preceding the filing of the lawsuit.

60. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees 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 obedience to the directions of the employer."

61. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, and Wage Order 4, Plaintiffs and members of the Expense Reimbursement Class were damaged in sums, which will be shown according to proof.

62. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure. They shall also be entitled to attorneys' fees and costs incurred in recovering such business expenses.

<u>EIGHTH CAUSE OF ACTION</u>

UNFAIR COMPETITION

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

63. Plaintiffs re-allege and incorporates by reference all previous paragraphs as though fully set forth herein.

64. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq*., by failing to pay all overtime and minimum wages owed, failing to provide all required meal periods and failing to authorize and permit all required rest periods, failing to pay meal and rest period premium wage payments, failing to reimburse all necessarily incurred business expenses, unlawfully deducting wages, and failing to issue accurate, itemized wage statements.

65. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiffs and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

66. Because Plaintiffs are the victims of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

67. The acts complained of herein occurred within the last four years immediately preceding the filing of the lawsuit in this action.

68. Plaintiffs were compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' non-exempt employees, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under Code of Civil Procedure § 1021.5.

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NINTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

69. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

70. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

71. Defendants failed to timely pay members of the Waiting Time Class all of their final wages at the time of termination, which include, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Further, Plaintiffs are informed and believe, and based thereon allege, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

TENTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(BY PLAINTIFF SEQUEIRA AGAINST ALL DEFENDANTS)

72. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

73. Defendants have committed several Labor Code violations against Plaintiffs and other Aggrieved Employees. Plaintiff Sequiera, an “Aggrieved Employee” within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative cause of action against Defendants to recover the civil penalties due to Plaintiff Sequiera, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (2) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those

violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other Aggrieved Employees the statutory minimum wage for all hours worked;

b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other Aggrieved Employees all overtime compensation earned;

c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other Aggrieved Employees;

d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other Aggrieved Employees;

e) Defendants violated Labor Code § 221 by unlawfully deducting from wages owed to Plaintiff and other Aggrieved Employees for all certain work-related expenses;

f) Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and other Aggrieved Employees for necessary work expenditures;

g) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other Aggrieved Employees with accurate and compliant itemized wage statements;

h) Defendants violated Labor Code § 221 by illegally and deducting from the wages of Plaintiff and other Aggrieved Employees;

i) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other Aggrieved Employees all earned wages at least twice during each calendar month; and

j) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other Aggrieved Employees.

74. On September 28, 2022, Plaintiff Sequiera notified Defendants via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via e-mail, of Defendants' violations of the California Labor Code and Plaintiff Sequiera's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified

in Paragraph 73 (a)-(j). Attached hereto as **Exhibit 1** is a true and correct copy of the September 28, 2022 correspondence. Now that sixty-five days have passed from Plaintiff Sequiera notifying Defendants of these violations, Plaintiff Sequiera has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

75. Plaintiff Sequiera was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff Sequiera has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiffs pray for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiffs as representatives of the Classes;

3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;

4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198.

5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.2, 204, 558, 1194, 1197, 1197.1 and 1198;

6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;

8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 221, 1194, 1194.2, 1197, 1197.1 and 1198;

9. Upon the Sixth Cause of Action, for penalties pursuant to Labor Code §§ 226, 226.2, and 226.3;

10. Upon the Seventh Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;

11. Upon the Eighth Cause of Action for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*.;

12. Upon the Ninth Cause of Action, for penalties pursuant to Labor Code §§ 201-203;

13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff Sequiera, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $250.00 for each initial violation and $1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 72 (a)-(j) above.

14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

15. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

16. For such other and further relief the Court may deem just and proper.

Respectfully submitted,

Dated: February 15, 2024 LIDMAN LAW, APC

By: Scott M

Scott M. Lidman
Milan Moore
Attorneys for Plaintiffs
BIDKAR SEQUEIRA and JUAN SALAS

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

Dated: February 15, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________________

Scott M. Lidman
Milan Moore
Attorneys for Plaintiffs
BIDKAR SEQUEIRA and JUAN SALAS

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW
2155 Campus Drive, Suite 150, El Segundo, CA 90245
Office: (424) 322-4772
Fax: (424) 322-4775

September 28, 2022

VIA LWDA WEBSITE
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Mobile Clear Shield, LLC
c/o Brandon Frazier, Agent for Service of Process
17644 Chatsworth Street
Granada Hills, CA 91344

Re: *Bidkar Sequeira v. Mobile Clear Shield, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Bidkar Sequeira in claims arising from his employment with Mobile Clear Shield, LLC ("Defendant"). Mr. Sequeira is an "aggrieved employee" as defined by Labor Code sections 2699, *et seq*. due to Defendant's numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires Aggrieved Employees to notify their employer and the Labor and Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Sequeira intends to pursue a lawsuit on behalf of other "Aggrieved Employees", which should be considered to include all current and former employees in California classified as non-exempt by Defendant who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Sequeira, a current employee, has been employed by Defendant from approximately 2019 through the present as a non-exempt employee. During his employment, Mr. Sequeira worked as an installer who was paid on a piece-rate basis.

During his employment with Defendant, Mr. Sequeira and other non-exempt employees were paid on a piece-rate basis, whereby Mr. Sequeira and other non-exempt employees were paid a certain rate per certain work units performed. However, Mr. Sequeira is informed and believes, and based thereon alleges, that they were never separately compensated at least at the minimum wage for time spent working on tasks which were not compensated on a piece-rate basis, including without limitation hours spent cleaning and maintaining his tools, waiting for work, performing administrative tasks, waiting for customers, and taking rest breaks (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("DTLA") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer....”); Lab. Code §226.2.

Further, because Mr. Sequeira and other non-exempt employees who were paid, at least in part, on a piece rate basis often worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendant to compensate them for all their work time due to their unlawful piece rate compensation practices caused them to be deprived of all overtime wages owed.

Mr. Sequeira further contends that Defendant did not properly track the time worked by Mr. Sequeira and other non-exempt employees such that they were not compensated for all hours worked which were not tracked, and thus deprived of minimum wages owed for such time. Further, due to this timekeeping problem, when Mr. Sequeira and other non-exempt employees worked in excess of 8 hours in a day or 40 hours in a week, Mr. Sequeira was also deprived of all overtimes wages owed. More specifically, although Mr. Sequeira often worked in excess of 80 hours in a day, he was instructed that he was only permitted to report a maximum of 8.0 hours in a shift.

While working for Defendant, Plaintiffs and other non-exempt employees often worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Plaintiffs and other non-exempt employees received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite Defendant’s payment of Incentive Pay to Mr. Sequeira and other non-exempt employees, Defendant’s policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Mr. Sequeira and other non-exempt employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Mr. Sequeira and other non-exempt employees all required overtime wages.

Throughout his employment with Defendant, Mr. Sequeira was not provided all required meal periods due to Defendant’s meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to his job duties and the work demands imposed by Defendant, Mr. Sequeira was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or were at least 30 minutes in length. This policy and practice of Defendant not providing lawful meal periods to Mr. Sequeira and/or requiring Mr. Sequeira and other non-exempt employees to take a meal period after the end of the fifth hour of work or that was less than 30 minutes in length violates California law. Further, when Mr. Sequeira worked in excess of 10.0 hours per day, Defendant failed to provide him with a second meal period that was at least 30 minutes in length, further violating California law.

Although Mr. Sequeira was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Sequeira with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to Mr. Sequeira and their other non-exempt employees.

Mr. Sequeira was also not authorized and permitted to take all legally required and properly paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, due to heavy work demands, Mr. Sequeira was not authorized to take required rest periods. Moreover, Mr. Sequeira worked shifts in excess of 3.5 hours, and was never provided with a lawfully paid rest period for every 4-hour period worked, or major fraction thereof, because Defendant's piece-rate compensation plan failed to separately and/or properly compensate Mr. Sequeira for required rest periods. *See Bluford v. Safeway Inc.*, 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."); Lab. Code §226.2. As a result, Mr. Sequeira was not paid at least the minimum wage for all hours worked as well as all compensation owed pursuant to Labor Code section 226.2, and was deprived of all rest period premium payments.

On those occasions when Mr. Sequeira was not authorized and permitted to take all legally-compliant paid rest periods to which he was entitled, Defendant failed to compensate Mr. Sequeira with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

As a result of Defendant's failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Sequeira. Additionally, the wage statements issued by Defendant independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i) total hours worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii) the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period; (iv) list of deductions; and (v) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

Defendant also failed to reimburse Mr. Sequeira and other non-exempt employees who were paid, at least in part, on a piece rate basis for necessary business expenses incurred throughout the relevant time period. Specifically, Defendant did not reimburse Mr. Sequeira for, among other things, expenses related to the use of a personal vehicle.

Despite these requirements, Defendant did not reimburse Mr. Sequeira for incurring these necessary business expenses in violation of California law.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 ("Wage Order 4"):

<u>Overtime Violations</u>

Defendant was required to pay Mr. Sequeira and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 4, § 3. According to Labor Code § 510(a), "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." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked."

As described above, Mr. Sequeira and other Aggrieved Employees were paid per on a piece rate basis per vehicle serviced. As a result, Mr. Sequeira and other Aggrieved Employees were not separately compensated for time spent working on tasks unrelated the piece rate work, including, without limitation, waiting for work and/or customers, driving between jobs, fueling their vehicles, performing administrative tasks such as completing paperwork, and taking rest breaks (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("DTLA") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...."); Lab. Code §226.2. Because Mr. Sequeira and other Aggrieved Employees often worked in excess of 8 hours in a day or 40 hours in a week, the failure by Defendant to compensate Mr. Sequeira and other Aggrieved Employees for all their work time due to their unlawful piece rate compensation practices, Mr. Sequeira and the other Aggrieved Employees were deprived of all overtimes wages owed

Mr. Sequeira further contends that Defendant did not properly track the time worked by Mr. Sequeira and other Aggrieved Employees such that they were not compensated for all hours worked which were not tracked. Due to this timekeeping problem, when Mr. Sequeira and the other Aggrieved Employees worked in excess of 8 hours in a day or 40 hours in a week, they were deprived of all overtime wages owed.

While working for Defendant, Mr. Sequeira and other Aggrieved Employees often worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Mr. Sequeira and other Aggrieved Employees received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Sequeira and other Aggrieved Employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Mr. Sequeira and other Aggrieved Employees to be underpaid all of their required overtime wages.

Minimum Wage Violations

Defendant was required to pay Mr. Sequeira and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; the Wage Order 4, § 4. Mr. Sequeira and other Aggrieved Employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, Mr. Sequeira and other Aggrieved Employees were paid per on a piece rate basis per vehicle serviced. As a result, Mr. Sequeira and other Aggrieved Employees were not separately compensated for time spent working on tasks unrelated the piece rate work, including, without limitation, waiting for work and/or customers, driving between jobs, fueling their vehicles, performing administrative tasks such as completing paperwork, and taking rest breaks (e.g., non-productive time). *See e.g. Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 40-41 ("DTLA") ("…we conclude that class members [paid on a piece-rate] were entitled to separate hourly compensation for time spent waiting for repair work or performing other non-repair tasks directed by the employer...."); Lab. Code §226.2. As a result, Defendant failed to pay Mr. Sequeira and other Aggrieved Employees all required minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Sequeira and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; the Wage Order 4, § 11. Specifically, due to the job duties and the work demands imposed by Defendant, Mr. Sequeira other Aggrieved Employees were often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or were at least 30 minutes in length. This policy and practice of Defendant not providing lawful meal periods to Mr. Sequeira and/or not requiring Mr. Sequeira and other Aggrieved Employees to take a meal period before the end of the fifth hour of work or that was at least 30 minutes in length violates California law. Further, when Mr. Sequeira and other Aggrieved Employees worked in excess of 10.0 hours per day, Defendant failed to provide them with a second meal period that was at least 30 minutes in length, further violating California law. Therefore, Mr. Sequeira and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Sequeira and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Sequeira and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

<u>Rest Period Violations</u>

Defendant also failed to authorize and permit Mr. Sequeira and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, due to their status as independent contractors, Defendant did not have any rest period policies that applied to Mr. Sequeira and other Aggrieved Employees. Even so, due to heavy work demands, Mr. Sequeira and other Aggrieved Employees were not authorized to take required and paid rest periods. Moreover, Mr. Sequeira and other Aggrieved Employees worked shifts in excess of 3.5 hours, and were never provided with a lawfully paid rest period for every 4-hour period worked, or major fraction thereof, because Defendant's piece-rate compensation plan failed to separately compensate Mr. Sequeira for required rest periods. *See Bluford v. Safeway Inc*., 216 Cal. App. 4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods."); Lab. Code §226.2. As a result, Mr. Sequeira and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

<u>Failure to Reimburse Business Expenses</u>

Defendant did not reimburse Mr. Sequeira for, among other things, expenses related to the use of a personal vehicle. Despite these requirements, Defendant did not reimburse Mr. Sequeira for incurring these necessary business expenses Despite these requirements, Defendant did not reimburse Mr. Sequeira and other Aggrieved Employees for incurring these necessary business expenses in violation of California law. Further, Defendant illegally deducted such expenses from their wages owed, in further violation of California law. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 4, § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees 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.") Mr. Sequeira and other Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

<u>Unlawful Deductions</u>

As a matter of practice and policy, Defendant regularly deducted from the wages owed to Mr. Sequeira and other Aggrieved Employees to cover various work-related expenses incurred in the direct discharge of their job duties. Defendant knew or should have known that it is unlawful to deduct from wages owed to Mr. Sequeira and other Aggrieved Employees.

<u>Wage Statement Violations</u>

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Sequeira and other Aggrieved Employees with accurate and complete, itemized wage statements in violation of Labor Code § 226 *et seq*. Defendant's failure to furnish Mr. Sequeira and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As a result of Defendant's failure to pay all minimum and overtime wages, and meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Sequeira and other Aggrieved Employees.

Additionally, the pay statements issued by Defendant to Mr. Sequeira and other Aggrieved Employees independently violated Labor Code sections 226 and 226.2 in that they fail to show: (i) total hours worked during the pay period; (ii) the number of piece-rate units earned and any applicable piece rate; (iii) the total hours of compensable rest periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and (iv) the total hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay period.

As an "aggrieved employee," Mr. Sequeira will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Sequeira's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Sequeira and other Aggrieved Employees the statutory minimum wage for all hours worked;

b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Sequeira and other Aggrieved Employees all overtime compensation earned;

c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Sequeira and other Aggrieved Employees;

d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Sequeira and other Aggrieved Employees;

e) Defendant violated Labor Code § 221 by unlawfully deducting from wages owed to Mr. Sequeira and other Aggrieved Employees for all certain work-related expenses;

f) Defendant violated Labor Code § 2802 by failing to reimburse Mr. Sequeira and other Aggrieved Employees for necessary work expenditures;

g) Defendant violated Labor Code § 226 by failing to furnish Mr. Sequeira and other Aggrieved Employees with accurate and compliant itemized wage statements;

h) Defendant violated Labor Code § 221 by illegally and deducting from their wages;

i) Defendant violated Labor Code § 204 by failing to pay Mr. Sequeira and other Aggrieved Employees all earned wages at least twice during each calendar month; and

j) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Sequeira and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC

Scott M. Lidman

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On February 15, 2024, I served the foregoing document(s) described as: **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

RENEE N. NOY, ESQ. (SBN 231113)
Email: renee@workwiselaw.com
GEORGE P; ALBUTT, ESQ. (SBN 243030)
Email: george@workwiselaw.com
WORKWISE LAW, PC
23945 Calabasas Road, Suite 210
Calabasas, CA 91302
Telephone: (818) 591-6724

Attorneys for Defendant Mobile Clear Shield, LLC

[X] (BY ELECTRONIC SERVICE) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by electronic transmission via Case Anywhere.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 15, 2024, at El Segundo, California.

Dana Joudi