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on behalf of himself and others similarly situated

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Superior Court of California,
County of Imperial
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL

ENRIQUE RUIZ CONTRERAS, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

SIMPLY RIGHT, an entity of unknown form;
SIMPLY RIGHT, INC., a Utah corporation;
CINEMARK, an entity of unknown form; and
DOES 1 through 50, inclusive,

Defendants.

Case No. ECU004089

CLASS ACTION

Assigned for All Purposes To:
Hon. L. Brooks Anderholt
Dept.: 9

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

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

DEMAND FOR JURY TRIAL

1 Plaintiff ENRIQUE RUIZ CONTRERAS, (hereinafter “Plaintiff”) on behalf of himself
2 and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains
3 of 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 SIMPLY RIGHT,
8 an entity of unknown form; SIMPLY RIGHT, INC., a Utah corporation; CINEMARK, an entity
9 of unknown form; and DOES 1 through 50 (all defendants being collectively referred to herein as
10 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of
11 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and
12 California Business & Professions Code, and seeks redress 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 at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Imperial County, and in other nonexempt positions, throughout
17 California and, and consistently worked at Defendants’ behest without being paid all wages due.
18 More specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift. Defendants further failed to accurately record time worked by Plaintiff and Employee Class
27 members by rounding hours worked to reflect scheduled shift start and end times as opposed to
28 actual hours worked. Defendants thus failed to pay Plaintiff and the Class members for all hours

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

5 **THE PARTIES**

6 **A. The Plaintiff**

7 4. Plaintiff ENRIQUE RUIZ CONTRERAS has resided in California and during the
8 time period relevant to this Complaint was employed by Defendants as a non-exempt hourly
9 employee within the State of California.

10 **B. The Defendants**

11 1. Defendant SIMPLY RIGHT is an entity of unknown form and has been listed as
12 the employer on Plaintiff's personnel file and paystubs during the relevant time period. SIMPLY
13 RIGHT does not list a mailing address with the California Secretary of State, but upon information
14 and belief, employs Plaintiff and the Class members in Imperial County, including at Defendants'
15 offices and facilities in El Centro, California, and throughout California and conducts business
16 throughout California. Plaintiff is informed and believes, and based thereon alleges, that
17 SIMPLY RIGHT is a "labor contractor" within the meaning of Labor Code § 2810.3 that provides
18 outplacement staffing and payroll services for various industries and professions, including for
19 CINEMARK.

20 5. Defendant SIMPLY RIGHT, INC. is a Utah corporation and has been listed as the
21 employer on Plaintiff's personnel file during the relevant time period. SIMPLY RIGHT, INC lists
22 a mailing address in Salt Lake City, Utah with the California Secretary of State and employs
23 Plaintiff and the Class members in Imperial County, including at Defendants' offices and facilities
24 in El Centro, California, and throughout California and conducts business throughout California.
25 Plaintiff is informed and believes, and based thereon alleges, that SIMPLY RIGHT, INC. is a
26 "labor contractor" within the meaning of Labor Code § 2810.3 that provides outplacement staffing
27 and payroll services for various industries and professions, including for CINEMARK.

2. Defendant CINEMARK is an entity of unknown form and has been listed as the employer on Plaintiff's personnel file during the relevant time period. CINEMARK does not list a mailing address with the California Secretary of State, but upon information and belief, employs Plaintiff and the Class members in Imperial County, including at Defendants' offices and facilities in El Centro, California, and throughout California and conducts business throughout California. Plaintiff is informed and believes, and based thereon alleges, that CINEMARK is a "client employer" within the meaning of Labor Code § 2810.3 that procures outplacement staffing and payroll services from various staffing agencies, including but not limited to, SIMPLY RIGHT and SIMPLY RIGHT, INC.

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

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

JURISDICTION AND VENUE

8. This Court has jurisdiction over this Action pursuant to California Code of Civil

1 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
2 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
3 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
4 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
5 obligations and liabilities giving rise to this lawsuit occurred at least in part in Imperial County
6 and Defendants maintain and operate company offices and facilities in Imperial County, and
7 employ Plaintiff and other Class members in Imperial County and throughout California.

8 **FACTUAL BACKGROUND**

9 9. The Employees who comprise the Class and Collective, including Plaintiff, are
10 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
11 Employees who work in nonexempt positions at the direction of Defendants in the State of
12 California. Plaintiff and the Class members were either not paid by Defendants for all hours
13 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
14 Plaintiff and Employees were not paid for the time that they worked “post-shift” without
15 compensation by being required to continue completing work tasks after clocking out. Moreover,
16 Defendants required Employees to use their personal cell phones to respond to work demands
17 outside of scheduled work hours, and Employees were not compensated for this time. Defendants
18 also had a uniform policy and practice of rounding all time entries to reflect scheduled shift start
19 and end times rather than paying Plaintiff and the Class members for all hours and minutes they
20 actually worked. Defendants generally rounded time entries to the detriment of the Employees,
21 and these unlawfully rounded time entries were inputted into Defendants’ payroll system from
22 which wage statements and payroll checks were created. Plaintiff also contends that Defendants
23 failed to pay Plaintiff and the Class members all wages due and owing, failed to provide rest
24 breaks, and failed to furnish accurate wage statements, all in violation of various provisions of the
25 California Labor Code and applicable Wage Orders.

26 10. During the course of Plaintiff and the Class members’ employment with
27 Defendants, they were not paid all wages they were owed, including for all work performed and
28 for all overtime hours worked and were forced to work during their rest breaks. Defendants also

1 failed to maintain timekeeping records for Plaintiff that would permit him to discover the nature
2 and extent of Defendants' understatement of hours worked.

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

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

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

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

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

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

22 17. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
23 continuing to the present, Defendants have consistently failed to provide Employees with timely,
24 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

25 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
26 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
27 performance of their job duties for Defendants including the cost of personal cellphone usage,
28 protective gear, and tools, all of which were necessary to perform their duties under Defendants'

1 employ in violation of Labor Code § 2802.

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

5 20. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
6 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to
7 Employees at the time of their termination or within seventy-two (72) hours of their resignation, as
8 required by California wage-and-hour laws. Defendants also consistently failed to pay Plaintiff
9 and Class members all wages due on a semi-monthly basis.

10 21. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
11 Code §§ 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,
12 1182.12, 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq.*, and 2802.

13 22. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
14 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
15 enjoyed from their violations of Labor Code.

16 **CLASS ALLEGATIONS**

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

21 24. Further, Plaintiff seeks to represent the following Subclasses composed of and
22 defined as follows:

23 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
24 compensated for all hours worked for Defendants at the applicable minimum wage.

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

28 c. Subclass 3. Rest Break Subclass. All Class members who were subject to

Defendants' policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

d. Subclass 4. Payroll Records Subclass. All Class members who were subject to Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

f. Subclass 6. Failure to Reimburse for Necessary Business Expenditures. All Class members who were subject to Defendants' failure to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants.

g. Subclass 7. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

h. Subclass 8. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

25. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

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

A. Numerosity

27. The potential members of the class as defined are so numerous that joinder of all the member of the class is impracticable. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants employ or, during the

1 time period relevant to this lawsuit, employed more than 100 individuals within the State of
2 California.

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

6 **B. Commonality**

7 29. There are questions of law and fact common to the class that predominate over any
8 questions affecting only individual class members. These common questions of law and fact
9 include:

- 10 a. Whether Defendants failed to pay Employees minimum wages;
- 11 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 12 c. Whether Defendants failed to pay Employees overtime as required under Labor
13 Code § 510;
- 14 d. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage
15 Orders, by failing to provide Employees with requisite rest breaks or premium pay
16 in lieu thereof;
- 17 e. Whether Defendants violated Labor Code § 226(a);
- 18 f. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 19 g. Whether Defendants failed to reimburse Employees for necessary business
20 expenses;
- 21 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
22 wages and compensation due and owing at the time of termination of employment;
- 23 i. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*;
- 24 j. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 25 k. Whether Employees are entitled to equitable relief pursuant to Business and
26 Professions Code § 17200 *et seq.*

27 **C. Typicality**

28 30. The claims of the named plaintiff are typical of those of the other Employees.

1 Employees all sustained injuries and damages arising out of and caused by Defendants' common
2 course of conduct in violation of statutes, as well as regulations that have the force and effect of
3 law, as alleged herein.

4 **D. Adequacy of Representation**

5 31. Plaintiff will fairly and adequately represent and protect the interest of Employees.
6 Counsel who represents Employees are experienced and competent in litigating employment class
7 actions.

8 **E. Superiority of Class Action**

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

14 33. Class action treatment will allow those persons similarly situated to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

19 **(Against All Defendants)**

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

22 35. Defendants failed to pay Employees minimum wages for all hours worked.
23 Defendants had a consistent policy of misstating Employees time records and failing to pay
24 Employees for all hours worked. Employees would work hours and not receive wages, including
25 as alleged above in connection with working "post-shift" without compensation by being
26 required to continue completing work tasks after clocking out and being required to respond to
27 work-related phone calls and texts received while off-the-clock. Defendants also had a uniform
28 policy and practice of rounding all time entries to reflect scheduled shift start and end times

1 rather than paying Plaintiff and the Class members for all hours and minutes they actually
2 worked. Defendants generally rounded time entries to the detriment of the Employees, and these
3 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
4 statements and payroll checks were created. Defendants thus regularly failed to pay minimum
5 wages to Plaintiff and Class members. Moreover, Defendants did not pay Plaintiff and
6 Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of
7 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
8 whole, as a result of implementing a uniform policy and practice that denied accurate
9 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

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

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

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

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

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

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

25 40. California Labor Code § 1194.2 also provides for the following remedies:

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

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

44. By their conduct, as set forth herein, Defendants violated California Labor Code § 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 paying Employees wages for all hours worked including time off the clock working “post-shift” without compensation by being required to continue completing work tasks after clocking out and being required to respond to phone calls and texts received while off-the-clock. Employees regularly worked over 8 hours on a given day or over 40 hours in a given week without receiving overtime compensation.

45. Defendants' failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages

1 and overtime compensation earned by Employees. Each such failure to make a timely payment of
2 compensation to Employees constitutes a separate violation of California Labor Code § 204.

3 46. Employees have been damaged by these violations of California Labor Code §§
4 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

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

9 **THIRD CAUSE OF ACTION**

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

11 **(Against All Defendants)**

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

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

17 50. Defendants failed to provide Employees with timely rest breaks of not less than ten
18 (10) minutes for each consecutive four (4) hour shift. What rest breaks were provided were also
19 not duty-free due to Defendants' policy and practice of interrupting rest breaks with work
20 demands.

21 51. Moreover, Defendants failed to compensate Employees for each rest period not
22 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
23 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
24 accordance with this section, the employer shall pay the employee one hour of pay at the
25 employee's regular rate of compensation for each workday that the rest period is not provided.
26 Defendants failed to compensate the Employees in the Class for each rest period not provided or
27 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
28 Order.

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

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
6 **IN VIOLATION OF LABOR CODE § 2802**
7 **(Against All Defendants)**

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

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

13 55. Employees incurred necessary expenditures in the performance of their job duties
14 for Defendants, including the costs of cell phone usage, protective gear, and tools, all of which
15 were necessary to perform their duties under Defendants' employ. From four (4) years prior to the
16 original filing of this lawsuit and continuing to the present, Defendants consistently failed to
17 reimburse Employees for these necessarily incurred business expenses.

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

21 **FIFTH CAUSE OF ACTION**
22 **VIOLATION OF LABOR CODE § 226(a)**
23 **(Against All Defendants)**

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

26 58. California Labor Code § 226(a) requires an employer to furnish each of his or her
27 employees with an accurate, itemized statement in writing showing the gross and net earnings,
28 total hours worked, and the corresponding number of hours worked at each hourly rate; these

1 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
2 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
3 statements may be given to the employee separately from the payment of wages; in either case the
4 employer must give the employee these statements twice a month or each time wages are paid.

5 59. Defendants failed to provide Employees with accurate itemized wage statements in
6 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
7 Defendants, failed to accurately account for wages, overtime, and premium pay for deficient rest
8 breaks, and reflected incorrect hours worked, all of which Defendants knew or reasonably should
9 have known were owed to Employees, as alleged hereinabove. Additionally, the wage statements
10 given to Employees, by Defendants, failed to include the requirements enumerated above.
11 Employees' wage statements did not include: the total hours worked in violation of Labor Code §
12 226(a)(2) and failed to accurately set forth all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each such rate in violation of Labor Code
14 § 226(a)(9). The wage statements provided to Employees were confusing and required Employees
15 to engage in discovery and refer to outside sources to verify whether their pay was correct,
16 potentially resulting in a miscalculation by the Employees.

17 60. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
18 Employees suffered injuries, including among other things confusion over whether they received
19 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
20 forcing them to make mathematical computations to analyze whether the wages paid in fact
21 compensated them correctly for all hours worked.

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

27 62. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
28 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for

1 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
2 employee for each pay period.

3 63. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
4 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
5 shown according to proof.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**

8 **AND 1174.5**

9 **(Against All Defendants)**

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

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

16 66. During the course of Plaintiff's and Employees' employment, Defendants
17 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
18 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
19 overtime, and premium pay as discussed above.

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

22 **SEVENTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 203**

24 **(Against All Defendants)**

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

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

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

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

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

9 73. Labor Code §201.3 sets forth the timing requirements for the payment of wages
10 due during an employee's employment and upon separation of employment from a temporary
11 services employer such as Defendants here.

12 74. Labor Code §201.3(b)(1) states: "Except as provided in paragraphs (2) to (5),
13 inclusive, if an employee of a temporary services employer is assigned to work for a client, that
14 employee's wages are due and payable no less frequently than weekly, regardless of when the
15 assignment ends, and wages for work performed during any calendar week shall be due and
16 payable not later than the regular payday of the following calendar week. A temporary services
17 employer shall be deemed to have timely paid wages upon completion of an assignment if wages
18 are paid in compliance with this subdivision."

19 75. Labor Code §201.3(b)(2) states: "If an employee of a temporary services employer
20 is assigned to work for a client on a day-to-day basis, that employee's wages are due and payable
21 at the end of each day, regardless of when the assignment ends, if each of the following occurs:
22 (A) The employee reports to or assembles at the office of the temporary services employer or other
23 location[;] (B) The employee is dispatched to a clients worksite each day and returns to or reports
24 to the office of the temporary services employer or other location upon completion of the
25 assignment [; and] (C) The employee's work is not executive, administrative, or professional, as
26 defined in the wage orders of the Industrial Welfare Commission, and is not clerical."

27 76. Labor Code §201.3(b)(3) states "[i]f an employee of a temporary services employer
28 is assigned to work for a client engaged in a trade dispute, that employee's wages are due and

1 payable at the end of each day, regardless of when the assignment ends.”

2 77. Labor Code §201.3(b)(4) and (5) provides that employees of a temporary services
3 employer assigned to work for a client and is discharged or quits his or her employment with the
4 temporary services employer, wages are due and payable as provided
5 in California Labor Code §§201 and 202, respectively.

6 78. Labor Code §201.3(c) states that “[a] temporary services employer who violates
7 this section shall be subject to the civil penalties provided for in Section 203, and to any other
8 penalties available at law.”

9 79. During the relevant time period and through their conduct including that alleged
10 herein, Defendants failed and refused, and continue to fail and refuse, to pay Employees their
11 wages, earned and unpaid, during employment by the times set forth by Labor Code §201.3.

12 **EIGHTH CAUSE OF ACTION**

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

14 **(Against All Defendants)**

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

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

22 82. Plaintiff is a “person” within the meaning of Business & Professions Code
23 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
24 relief, restitution, and other appropriate equitable relief.

25 83. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
26 business practices.

27 84. Wage-and-hour laws express fundamental public policies. Paying employees their
28 wages and overtime, providing them with rest periods, etc., are fundamental public policies of

1 California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce
2 minimum labor standards, to ensure that employees are not required or permitted to work under
3 substandard and unlawful conditions, and to protect law-abiding employers and their employees
4 from competitors who lower costs to themselves by failing to comply with minimum labor
5 standards.

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

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

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

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

20 89. Unless restrained by this Court, Defendants will continue to engage in such
21 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
22 should make such orders or judgments, including the appointment of a receiver, as may be
23 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
24 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
25 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
26 have unlawfully failed to pay.

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1 **NINTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 91. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
7 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
8 alleged violators, Defendants.

9 92. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
10 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
11 penalty provisions, without limitation, based on the following California Labor Code sections:
12 201, 201.3, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
13 1185, 1194, 1194.2 1197, 1199, 2698, 2699, *et seq.*, and 2802.

14 93. The penalties shall be allocated as follows: 65% to the Labor and Workforce
15 Development Agency (LWDA) and 35% to the affected employee.

16 94. Employees also seek any and all penalties and remedies set forth in Labor Code §
17 558, which states:

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

24 96. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
25 LWDA and Defendants postmarked May 19, 2025. The LWDA has not provided notice of its
26 intent to investigate the alleged violations withing 65 calendar days of the postmark date of the
27 letters.

28 ///

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided and where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
5. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
6. For penalties pursuant to Labor Code § 226.3, as may be proven;
7. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
8. For penalties pursuant to Labor Code § 1174.5, as may be proven;
9. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
10. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
11. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
12. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
13. For all general, special, and incidental damages as may be proven;
14. For an award of pre-judgment and post-judgment interest;

- 1 15. For an award providing for the payment of the costs of this suit;
2 16. For an award of attorneys' fees; and
3 17. For such other and further relief as this Court may deem proper and just.

4
5 DATED: July 23, 2025

D.LAW, INC.

6
7 By 
8 David Yerejian
9 Roman Shkodnik
10 Mason Doidge
11 Attorneys for Plaintiff
12 ENRIQUE RUIZ CONTRERAS
13 and the putative class

DEMAND FOR JURY TRIAL

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

DATED: July 23, 2025

D.LAW, INC.

By



David Yerejian
Roman Shkodnik
Mason Doidge
Attorneys for Plaintiff
ENRIQUE RUIZ CONTRERAS
and the putative class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 450 N Brand Blvd., Suite 840, Glendale, CA 91203.

On July 23, 2025, I served the foregoing: **FIRST AMENDED CLASS ACTION COMPLAINT** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

KAUFMAN McANDREW LLP
MITCHELL F. KAUFMAN (SBN 157504)
mitch@kmcllp.com
STEPHEN F. MCANDREW (SBN 149063)
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Attorneys for Defendant Cinemark USA, Inc.

Ashton Lay
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Agent for Defendant Simply Right

☒ **(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.

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

1 **[X] (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.

2 **[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of
3 California that the foregoing is true and correct.

4 Executed on July 23, 2025, at Glendale, California.

5 
Kathryn Perez