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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

Attorneys for Plaintiff, KEVIN
ALVARADO, and on behalf of all others
similarly situated

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

KEVIN ALVARADO, individually and on
behalf of all similarly situated individuals,

Plaintiff,

v.

TOM MALLOY CORPORATION doing
business as **TRENCH SHORING**
COMPANY; a California corporation; and
DOES 1-100;

Defendants.

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime Wages;
- 3) Failure to Provide Meal Periods or
Premium Pay in Lieu Thereof;
- 4) Failure to Provide Rest Periods or
Premium Pay in Lieu Thereof;
- 5) Failure to Reimburse Necessary
Business Expenses;
- 6) Failure to Provide and Maintain
Accurate Records;
- 7) Failure to Pay Wages When Due During
Employment and at Separation;
- 8) Violation of California's Unfair
Competition Law; and
- 9) PAGA.

Jury Trial Requested

1 Plaintiff Kevin Alvarado (“Plaintiff”), on behalf of himself and all other similarly situated
2 current and former employees (“Class Members”), by and through his counsel of record, alleges as
3 follows against Tom Malloy Corporation doing business as Trench Shoring Company, and DOES
4 1-100 (collectively, “Defendants”):

5 **PARTIES**

6 1. Plaintiff Kevin Alvarado is a resident of Los Angeles County, California. Plaintiff
7 was as an hourly, non-exempt employee of Defendants working as a Yard Guy from approximately
8 October 2023 through at least the present date. Plaintiff Kevin Alvarado was subject to the policies
9 and practices described in this Complaint at all times during his employment with Defendants.

10 2. Defendant Tom Malloy Corporation doing business as Trench Shoring Company
11 (hereinafter “TMC”) is a California corporation. On information and belief, TMC has employed at
12 least 50 hourly, non-exempt employees in a variety of capacities through the four years leading to
13 this Complaint within the state of California. TMC is a California stock corporation with its principal
14 place of business at 206 North Central Avenue Compton, California 90220.

15 3. Plaintiff is not currently aware of the names and true identities of defendants Does 1-
16 100. Plaintiff reserves the right to amend this complaint to allege their true names and capacities
17 when this information is available. Each Doe defendant is responsible for the damages alleged
18 pursuant to each of the causes of action asserted, either through its own conduct, or vicariously
19 through the conduct of others. Further references in this complaint to any named Defendants includes
20 the fictitiously named defendants.

21 4. At all times alleged herein, each Defendant was an agent, servant, joint employer,
22 employee, partner, and/or joint venture of every other Defendant and was acting within the scope of
23 the Defendants’ relationship. Moreover, the conduct of every Defendant was ratified by each
24 Defendant.

25 **VENUE AND JURISDICTION**

26 5. The court has jurisdiction over all causes of action in this complaint pursuant to
27 Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely
28 on California statutes and law, including the Labor Code and Business & Professions Code. Because

Defendants conduct substantial business in Los Angeles County, Defendants are within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

6. Venue as to Defendants is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendant TMC's principal place of business is located in Compton, California in the County of Los Angeles. A substantial amount of the unlawful acts alleged have directly affected Plaintiff, and similarly situated employees, in Los Angeles County, where Plaintiff was employed by Defendants and earned wages at issue in this action. Accordingly, this Court maintains appropriate jurisdiction over this dispute.

CLASS ACTION ALLEGATIONS

7. As a matter of uniform and systemic policy, Defendants failed to authorize and/or permit non-exempt employees the right to take timely, compliant, uninterrupted, and/or duty-free meal and rest breaks pursuant to Labor Code § 226.7 based on, at least, the following uniform policies and practices.

8. *First*, Defendants implemented a policy and practice that required Plaintiff and Class Members to remain on-call and in certain areas during meal and rest breaks. These policies prohibited employees from using meal and rest periods in a manner of their choosing, free from their employer's dominion and control.

9. *Second*, Defendants, in fact, interrupted Plaintiff and Class Members during their meal and rest periods to discuss work-related matters, instruct them on pending tasks, or require them to cut short their breaks to return to work, but did not allow them to clock back in, record this time as compensable time, or provide them with a compliant meal or rest period. Defendants also required Class Members to skip meal and rest breaks when workloads were high and/or when locations were understaffed.

10. *Third*, Defendants implemented an "auto-deduct" policy where they, as a matter of uniform policy and practice, deducted 30 minutes of time worked from each Class Member per shift for "meal periods" regardless of whether Class Members actually took a fully net-30 minute meal

1 period, were required to work through their meal period, or remained under Defendants' control
2 during their meal periods causing numerous Class Members to not only be denied legal compliant
3 meal periods, but to be shorted wages for time worked.

4 11. In failing to authorize and/or permit timely and/or uninterrupted meal and rest
5 periods, Defendants have also implemented a uniform policy of denying compensation in lieu of
6 meal and rest periods to its non-exempt employees. Defendants denied compensation in lieu of meal
7 and rest periods, including premium wages owed, notwithstanding their actual knowledge that such
8 employees were uniformly denied compliant meal and rest periods.

9 12. Additionally, by requiring employees to work during their meal periods but
10 preventing them from recording that time, Plaintiff and Class Members were forced to work off the
11 clock and deprived of owed straight time wages. Additionally, as Class Members worked shifts of
12 at least 8 hours, or weeks of at least 40 hours, or for days of work without one day's rest in seven,
13 some of this time was required to be paid at overtime rates, but was not done so.

14 13. Finally, Plaintiff and Class Members were not reimbursed for necessary business
15 expenditures to discharge their duties.

16 14. Accordingly, Plaintiff brings this action on behalf of himself and as a class action on
17 behalf of the following defined Class:

18 15. **Non-Exempt Employee Class:**

19 *All non-exempt, hourly employees who worked at least one 3.5-hour shift for*
20 *Defendants in the State of California from the period four years prior to the filing*
21 *of the Action and the date of trial ("Class").*

22 16. Common methods of proof exist for determining these issues on a class-wide basis,
23 including but not limited to, Defendants' employment records, payroll records, timesheets, policies,
24 and disciplinary records.

25 17. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least
26 50 Class Members have been employed as non-exempt employees by Defendants within the state of
27 California. The number of Class Members is sufficiently numerous such that joinder of all members
28 is impossible or impracticable.

18. **Typicality.** Plaintiff's claims are typical of all Class Members. Like all other Class Members, Plaintiff was subjected to the policies and practices set forth above. Plaintiff's job duties were typical of Class Members in all relevant respects.

19. **Adequacy.** There are no material conflicts between the claims of the representative Plaintiff and Class Members that would make class certification inappropriate. Plaintiff understands his obligation to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing Defendants' illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent counsel experienced in both class action and employment litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

20. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendants have a common policy and/or practice of failing to accurately record non-exempt employees' time;
- b. Whether Defendants have a common policy and/or practice by which they implemented an "auto-deduct" of 30 minutes or more for employees for meal periods regardless of whether employees took a meal period or its actual length;
- c. Whether Defendants' auto-deduct policy and practice unlawfully deprives employees of wages earned;
- d. Whether Defendants have a common policy and/or practice of failing to accurately compensate non-exempt employees for all time worked;
- e. Whether Defendants unlawfully required Plaintiff and Class Members to remain under Defendants' control and direction while off-the-clock;

- 1 f. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff
2 and Class Members at a minimum wage for all hours worked;
- 3 g. Whether Defendants unlawfully and/or willfully failed to compensate Plaintiff
4 and Class Members required overtime wages;
- 5 h. Whether Defendants have a common policy and/or practice of depriving Plaintiff
6 and Class Members of compliant, off-duty meal and/or rest periods;
- 7 i. Whether Defendants unlawfully required Plaintiff and Class Members to remain
8 under Defendants' control and direction while on meal and/or rest periods;
- 9 j. Whether Defendants unlawfully and/or willfully deprived Plaintiff and Class
10 Members of compliant, off-duty meal and/or rest periods;
- 11 k. Whether Defendants paid Plaintiff and Class Members all required premium
12 wages for non-compliant meal and/or rest periods;
- 13 l. Whether Defendants have a common policy and/or practice of failing to
14 reimburse employees for necessary business expenditures;
- 15 m. Whether Defendants have a common policy and/or practice of failing to maintain
16 accurate payroll records in the State of California;
- 17 n. Whether Defendants unlawfully and/or willfully failed to maintain accurate
18 payroll records in the State of California;
- 19 o. Whether Defendants have a policy and/or practice of failing to provide accurate
20 wage statements reflecting hours worked and wages earned to Plaintiff and Class
21 Members;
- 22 p. Whether Defendants unlawfully and/or willfully failed to provide accurate wage
23 statements reflecting hours worked and wages earned to Plaintiff and Class
24 Members;
- 25 q. Whether Defendants have a policy and/or practice of failing to timely pay wages
26 during employment in violation of Labor Code §§ 204, 210.
- 27 r. Whether Defendants have a policy and/or practice of failing to pay Plaintiff and
28 Class Members final wages owed upon termination;

- 1 s. Whether Defendants unlawfully and/or willfully failed to promptly pay
2 compensation due to Plaintiff and Class Members upon termination of
3 employment in violation of Labor Code §§ 201, 202, and 203;
- 4 t. Whether Plaintiff and Class Members sustained damages as a result of any of the
5 aforementioned violations, and, if so, the proper measure of those damages,
6 including interest, penalties, costs, attorneys' fees, and equitable relief;
- 7 u. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof.
8 Code § 17200, *et seq.*, by violating the above provisions of law; and
- 9 v. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof.
10 Code § 17200, *et seq.*, by treating Plaintiff and Class Members unfairly by
11 depriving them of meal and/or rest periods, failing to provide them with
12 compensation in lieu of meal and/or rest periods, failing to pay all regular and
13 overtime wages earned, failing to pay wages upon termination, failing to furnish
14 accurate and timely itemized wage statements upon payment of wages, and
15 failing to pay all compensation due upon discharge.

16 21. **Superiority.** A class action is superior to other available means for the fair and
17 efficient adjudication of this dispute. The damages suffered by individual Class Members, while
18 substantial, are small compared to the burden and expense of individual prosecution of the complex
19 and expensive litigation necessary to address Defendants' conduct. Even if Class Members
20 themselves could afford individual litigation, the court system would be overwhelmed by individual
21 lawsuits if all Class Members sought redress. In addition, individualized litigation increases the
22 delay and expense to all parties and to the court system resulting from the complex legal and factual
23 issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory
24 judgments. By contrast, the class action device presents far fewer management difficulties; it allows
25 the hearing of claims which might otherwise go unaddressed because of the relative expense of
26 bringing individual lawsuits, and it provides the benefits of single adjudication, economies of scale,
27 and comprehensive supervision by a single court. Plaintiff contemplates providing individual notice
28 to members of the Class through Defendants' records.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 ***California Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

4 ***Failure to Pay Minimum Wages for All Hours Worked***

5 **(Plaintiff and Class Against Defendants)**

6 22. Plaintiff repeats and incorporates by reference all allegations contained in the
7 preceding paragraphs as if fully set forth herein.

8 23. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that
9 payment of a wage less than the minimum wage as set by statute, commission, or by the general
10 prevailing rate is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time
11 during which an employee is subject to the control of an employer, and includes all the time the
12 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit.
13 8, § 11050(2)(L) (defining “Hours Worked”).

14 24. Defendants failed to compensate Plaintiff and the Class for all hours worked because
15 Defendants had a policy and/or practice whereby they required and/or pressured Class Members to
16 work off-the-clock and/or while on-call without compensating all time spent under Defendants’
17 control.

18 25. As part of this practice, Defendants failed to compensate Plaintiff and the Class for
19 all hours worked because Defendants had a policy and/or practice whereby they required Plaintiff
20 and Class Members to be on-call and on predesignated areas during their putative meal periods, but
21 were not paid for this time because it was not recorded as time worked. Additionally, Defendants
22 failed to compensate Plaintiff and the Class for all hours worked because of their “auto-deduct”
23 policy which deducted 30 minutes of time worked from each Class Member per shift for “meal
24 periods” regardless of whether Class Members actually took a fully net-30 minute meal period, were
25 required to work through their meal period, or remained under Defendants’ control during their meal
26 periods causing numerous Class Members to be shorted wages for time worked.

27 26. Defendants’ failure to pay Plaintiff and Class Members minimum wages for all hours
28 worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

27. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon, applicable civil penalties, and reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION

California Labor Code §§ 510 and 1198

Failure to Pay Overtime Wages

(Plaintiff and Class Against Defendants)

28. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

29. California Labor Code sections 510, 1198, and Industrial Wage Order No. 5 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis. Specifically, Industrial Wage Order No. 5 provides that Defendants were required to pay Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

30. Throughout the Class Period, Plaintiff and Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and/or in excess of 40 hours in a week because all hours worked were not recorded as compensable time as a direct consequence of Defendants' policies and practices, including without limitation its meal and rest period and "auto-deduct" policies and/or practices.

31. Because Plaintiff and Class Members worked shifts of more than eight hours a day or forty hours a week on the clock, some of this work qualified for overtime premium pay. Therefore, Plaintiff and Class Members were not paid overtime wages at the correct rate of pay for all of the overtime hours worked. Defendants knew or should have known that their policies and practices forced Plaintiff and Class Members to work in excess of eight hours per workday and/or 40 hours

per workweek without being compensated for all hours worked.

32. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees, and applicable civil penalties.

THIRD CAUSE OF ACTION

California Labor Code §§ 226.7, 512(a), and 1198

Failure to Provide Meal Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendants)

33. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

34. Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-104 (2012). An employee is also entitled to a second meal period for shifts in which the employee works in excess of ten hours.

35. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC, including Industrial Wage Order No. 5. "An off-duty meal period, therefore, is one in which the employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation is to provide an off-duty meal period: an uninterrupted 30-minute period during which the employee is relieved of all duty." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012). The employee must also be "free to leave the premises." *Id.* at 1036.

36. Defendants also failed to relieve Plaintiff and Class Members from all duty when on their meal period by requiring Plaintiff and Class Members to remain on-call during meal periods. Additionally, Defendants pressured Plaintiff and Class Members to prioritize completing assigned

1 work by working through their meal periods, skipping them, or by interrupting their meal periods,
2 or by taking them late. Numerous Class Members, including Plaintiff, were required to take late
3 meal periods, skip them, interrupt them, or remain on duty due to the combination of Defendants'
4 scheduling practices and policies.

5 37. Defendants did not pay Plaintiff and Class Members all meal period premium wages
6 when meal periods were missed, interrupted by work, and taken late, in violation of Wage Order
7 No. 5 and Labor Code sections 226.7 and 512(a).

8 38. Defendants' conduct violates Wage Order No. 5 and Labor Code sections 512(a),
9 226.7, and 1198. Plaintiff and Class Members are entitled to one additional hour of pay at their
10 regular rate of compensation for each workday that a compliant meal period was not provided, and
11 interest thereon, along with applicable civil penalties.

12 **FOURTH CAUSE OF ACTION**

13 ***California Labor Code §§ 226.7 and 1198***

14 ***Failure to Provide Rest Periods or Premium Pay in Lieu Thereof***

15 **(Plaintiff and Class Against Defendants)**

16 39. Plaintiff repeats and incorporates by reference all allegations contained in the
17 preceding paragraphs as if fully set forth herein.

18 40. At all times relevant to this complaint, Defendants knew it was obligated to provide
19 compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

20 41. Labor Code § 226.7 provides:

21 (a) No employer shall require any employee to work during any meal or rest period
22 mandated by an applicable order of the Industrial Welfare Commission.

23 (b) If any employer fails to provide an employee a meal period or rest period in
24 accordance with an applicable order of the Industrial Welfare Commission, the
25 employer shall pay the employee one additional hour of pay at the employee's
26 regular rate of compensation for each work day that the meal or rest period is not
27 provided.

28 42. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an

1 employee to work during any rest or meal period mandated by an applicable order of the IWC,
2 including Wage Order No. 5. Employers must authorize and permit employees to be relieved of all
3 duty during their rest and meal periods: “A rest period, in short, must be a period of rest.”¹ *Augustus*
4 *v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

5 43. Defendants failed to relieve Plaintiff and Class Members from all duty when on their
6 rest period by requiring Plaintiff and Class Members to remain on-call throughout rest periods.
7 Additionally, Defendants pressured Plaintiff and Class Members to prioritize completing assigned
8 work by working through their rest periods, skipping them, or by interrupting their rest periods.

9 44. As a direct and proximate result of Defendants’ willful and unlawful conduct,
10 Plaintiff and Class Members have sustained damages, including lost compensation resulting from
11 missed or non-compliant rest periods, in an amount to be established at trial.

12 45. Pursuant to Wage Order No. 5 and Labor Code § 226.7(b), Plaintiff and Class
13 Members are entitled to recover from Defendants an additional hour of pay at their regular rates of
14 pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions
15 were a violation of applicable law but consistently refused to pay premium pay as required by law.

16
17 **FIFTH CAUSE OF ACTION**

18 ***California Labor Code § 2802***

19 ***Failure to Reimburse Necessary Business Expenses***

20 **(Plaintiff and Class Against Defendants)**

21 46. Plaintiff repeats and incorporates by reference every allegation in this complaint as
22 if fully set forth herein.

23 47. Labor Code section 2802 provides that “[a]n employer shall indemnify his or his
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25

26 ¹ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department
27 of Industrial Relations, “Rest Periods/Lactation Accommodations,” *available at*
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the
work premises during my rest period? A. No, your employer cannot impose any restraints not
inherent in the rest period requirement itself.”).

of the discharge of his or his duties, or of his or his obedience to the directions of the employer.”
Lab. Code § 2802.

48. Defendants failed to reimburse Plaintiff and Class Members for all business-related expenses that were necessary to perform their job, including requiring Plaintiff and the Class to use of their personal cell phones for Defendants’ business. *See Cochran v. Schwan’s Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

49. By unlawfully failing to pay Plaintiff and Class Members, Defendants are liable for the costs Plaintiff and Class Members incurred plus attorneys’ fees and costs. Lab. Code § 2802.

SIXTH CAUSE OF ACTION

California Labor Code §§ 226(a)/(f)/(h), 226.3, and 1174(d)

Failure to Provide and Maintain Accurate Records

(Plaintiff and Class Against Defendants)

50. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

51. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) net wages earned; and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

52. At all times relevant to this complaint, Defendants’ failure to pay premium wages for missed meal and rest periods and minimum and/or overtime wages for work-off-the-clock rendered Class Members’ wage statements inaccurate by failing to accurately reflect Plaintiff’s and Class Member’s time worked, as well as premium, gross, and net wages earned.

53. Injury. Defendants knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed.

54. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others similarly situated are entitled to injunctive relief to ensure Defendants' compliance with Labor Code § 226, as well as attorney's fees and costs of suit.

55. Additionally, Defendants' actions in regard to Labor Code § 248.2(d)(2)(A) constitute violations of Labor Code sections 233 and 245, *et seq.* As a result, Plaintiff and the Class are accordingly entitled to all applicable civil penalties, and reasonable attorney's fees and costs in an amount subject to proof at trial. Lab. Code §§ 233 and 245, *et seq.*

SEVENTH CAUSE OF ACTION

California Labor Code §§ 201, 202, 203, 204, 210

Failure to Pay Wages When Due

(Plaintiff and Class Against Defendants)

56. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

57. Labor Code § 201 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages² shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she

² Labor Code § 200 defines “wages” as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” “Labor” is defined as “labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment.” Additionally, in *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022), the California Supreme Court recently held that failure to pay premiums for violating the California Labor Code’s meal and rest break provisions constitutes “wages” for purposes of waiting time penalties.

1 so requests and designates a mailing address. The date of the mailing shall constitute
2 the date of payment for purposes of the requirement to provide payment within 72
3 hours of quitting.

4 58. Defendants do not include definite periods of service in their contracts of
5 employment for Class Members employed at their California properties. Plaintiff's contract of
6 employment did not include a definite term.

7 59. Labor Code § 203 provides:

8 If an employer willfully fails to pay, without abatement or reduction, in accordance with §
9 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who
10 quits, the wages of the employee shall continue as a penalty from the due date thereof
11 at the same rate until paid or until an action therefor is commenced; but the wages
12 shall not continue for more than 30 days.

13 60. Labor Code § 204 provides that all wages, other than those mentioned in Section 201
14 and 202, are due and payable twice during each calendar month, on days designated in advance by
15 the employer as regular paydays.

16 61. Failure to Timely Pay Wages Due. As set forth above, Defendants failed to timely
17 pay the minimum wages, overtime wages, and meal and rest period premiums resulting from its
18 deficient timekeeping and meal and rest period policies upon its regularly scheduled paydays.

19 62. Relief. Defendants' failure to pay Plaintiff and those Class Members wages on their
20 regularly scheduled pay dates subjects Defendants to civil penalties in the amount of \$100 per employee
21 per initial violation and \$200 per employee for every subsequent violation of Labor Code § 204
22 pursuant to Labor Code § 210.

23 63. Failure to Pay Upon Termination. Plaintiff and many Class Members have left
24 Defendants' employ during the Class Period. As discussed above, Defendants knowingly failed to
25 pay Plaintiff and Class Members all earned wages upon termination. Instead, Defendants willfully
26 and intentionally refused to pay the earned rest and/or meal period premiums and earned minimum
27 wages as alleged herein to Plaintiff and Class Members in violation of Labor Code §§ 201 and 202.

28 64. Relief. Defendants' failure to pay Plaintiff and those Class Members who are no

1 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
2 seventy-two (72) hours of their leaving Defendants' employment, violates Labor Code §§ 201 and
3 202. Plaintiff and Class Members are therefore entitled to recover from Defendants the statutory
4 penalty wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum
5 penalty under Labor Code § 203.

6 **EIGHTH CAUSE OF ACTION**

7 ***California Business and Professions Code §§ 17200, et seq.***

8 ***Violation of California's Unfair Competition Law***

9 **(Plaintiff and Class Against Defendants)**

10 65. Plaintiff repeats and incorporates by reference every allegation in this complaint as
11 if fully set forth herein.

12 66. Defendants are each a "person" as defined by California Business & Professions
13 Code § 17201, as it is a natural person, corporation, firm, partnership, joint stock company, and/or
14 association.

15 67. Unlawful Business Practices. Defendants' knowing violations of the Labor Code and
16 IWC Wage Order No. 5 constitute an unlawful business practice as set forth in Business &
17 Professions Code § 17200, *et seq.*

18 68. Defendants' failure to abide by the laws discussed herein provide Defendants an
19 unfair advantage over their competitors at the expense of their workers. Instead, Defendants cut
20 corners in the name of higher profits and at the expense of employee well-being. Defendants' action
21 thereby constitutes an unfair, fraudulent, and/or unlawful business practice under Business &
22 Professions Code § 17200, *et seq.*

23 69. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to
24 stop Defendants' willful and ongoing misconduct, and to seek restitution of the amounts Defendants
25 acquired through the unfair, unlawful, and fraudulent business practices described herein. In
26 addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil
27 Procedure § 1021.5.

NINTH CAUSE OF ACTION

**(Violation of California Labor Code §§ 2698, 2699; Private Attorneys General Act
("PAGA") – Against All Defendants)**

70. Plaintiff incorporates by reference every allegation in this complaint as if fully set forth herein.

71. Plaintiff, solely in his representative capacity as a private attorney general under the Private Attorney General Act of 2004, Labor Code § 2699, et seq. ("PAGA"), hereby brings this action on behalf of all "aggrieved employees" and alleges as follows, by and through his counsel of record:

72. Under the authority expressed in *Adolph and Balderas v. Fresh Start Harvesting, Inc.*, No. B326759, at *1 (Cal. Ct. App. Mar. 20, 2024), Plaintiff does not bring suit in his individual capacity and does not seek to recover anything through this cause of action other than civil penalties as permitted under PAGA—he brings this cause of action solely in his representative capacity under the PAGA, on behalf of the State of California, the public, and all aggrieved employees of Defendants.

73. To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages for those violations, but only references those predicate violations as part of the State's claim for civil penalties under PAGA.

74. Standing. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, et seq., an aggrieved employee may bring a representative action as a private attorney general, on behalf of herself and other current or former employees to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders.

75. Plaintiff, by nature of his employment with Defendants, is an aggrieved employee for purposes of this Complaint with standing to bring an action under PAGA.

76. Plaintiff, on behalf of the State of California and all Aggrieved Employees, brings this representative action pursuant to Labor Code § 2699, et seq., seeking civil penalties for Defendants' violation of Labor Code §§ 201, 202, 203, 204, 206.5 226, 226.3, 226.7, 510, 512, 558,

1182.12, 1174, 1194, 1194.2, 1197, 1197.1, 1199, 1401, and 2802 as described herein, plus attorneys' fees and costs, solely in his representative capacity.

77. Entitlement to Penalties. Under the California Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney general, on behalf of herself and other current or former employees, against whom a violation of the same provision(s) was committed, as well as the general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage Orders within one year of filing a notice to the Labor and Workforce Development Agency in the amounts set forth in Labor Code § 2698.

78. These penalties are in addition to any other relief available under the Labor Code and are allocated sixty-five percent to the Labor and Workforce Development Agency and thirty-five percent to the affected employees.

79. These penalties may be "stacked" separately for each of Defendants' violations of the Labor Code subject to the exceptions enumerated in Labor Code section 2698(i). *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22, 2012); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30, 2016); Labor Code § 2698(i).

80. Procedural Requirements Met. On May 15, 2025, Plaintiff electronically filed a notice of claims with the LWDA and sent a copy to Defendants by certified mail. On July 21, 2025, the sixty-five-day notice period expired as to all defendants. Plaintiff did not receive notice from the LWDA that it would be investigating the complaint nor did Plaintiff receive notice from the LWDA that it was declining to investigate with the 65-day period under Labor Code § 2699.3. Since the LWDA took no steps within the prescribed time to intervene, Plaintiff has exhausted all required administrative remedies required to seek penalties under PAGA. *See* Lab. Code § 2699.3(a)(2).

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

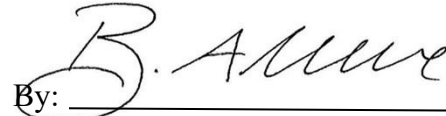
WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- A. For an Order:
 - a. Certifying the Class;
 - b. Appointing Plaintiff as representative of the Class;
 - c. Appointing Plaintiff's counsel as Class Counsel;
- B. For actual and liquidated damages according to proof at trial;
- C. For statutory and civil penalties and special damages, according to proof at trial;
- D. For pre- and post-judgment interest on monetary damages;
- E. For preliminary and permanent injunctive relief;
- F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law;
- G. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
- H. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
- I. For such other relief as this Court deems just and proper.

Dated: August 7, 2025

Respectfully submitted,

AKHAVAN & ASSOCIATES

By: 

Bardia A. Akhavan, Esq.
Attorneys for Plaintiff and the Putative Class