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8 Attorneys for Plaintiff(s),
MAX PAILET, and all others similarly situated
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12 **(UNLIMITED JURISDICTION)**
13

14 MAX PAILET, on behalf of himself and all
others similarly situated, and the general public,
15 and as an “aggrieved employee” on behalf of
other “aggrieved employees” and the State of
16 California under the Labor Code Private
Attorneys General Act of 2004,
17

18 *Plaintiff(s),*

19 vs.

20 C-HIREE PERSONNEL INC., a California
corporation; C-HIREE & PERSONNEL, LLC, a
21 California limited liability company,
NATIONAL RETAIL TRANSPORTATION,
22 INC., a Pennsylvania corporation; NATIONAL
RETAIL SYSTEMS, INC., a Pennsylvania
23 corporation; and DOES 1–50, inclusive,
24

25 *Defendant(s).*
26
27
28

Case No. CIV SB2226345

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 201.3, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*; and
8. Civil Penalties (Lab. Code §§ 2898, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiff, Max Paillet (hereafter “Plaintiff” or “Paillet”), on behalf of himself and all others
2 similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 I. INTRODUCTION

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants C-Hiree Personnel
9 Inc., a California corporation, C-Hiree & Personnel, LLC, a California limited liability company,
10 National Retail Transportation, Inc., a Pennsylvania corporation, National Retail Systems, Inc., a
11 Pennsylvania corporation, and Does 1 through 50, inclusive (collectively “Defendants”).

12 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
13 him and other similarly situated workers for unpaid wages, statutory penalties, interest, and
14 related relief. These claims are based on Defendants’ failures to:

15 (A) Pay all wages, including minimum, regular, overtime, doubletime wages,
16 and reporting time wages earned for all hours worked at the correct rates of pay;

17 (B) Provide all meal periods;

18 (C) Authorize and permit all rest breaks;

19 (D) Pay premium wages for unprovided meal periods;

20 (E) Pay premium wages for unprovided rest breaks;

21 (F) Pay for reporting time;

22 (G) Indemnify for necessary work-related expenditures;

23 (H) Issue only accurate and complete itemized wage statements; and

24 (I) Timely pay wages upon termination of employment

25 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
26 restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.

27 II. THE PARTIES

28 3. Plaintiff Max Paillet is a resident of California. At all relevant times, Plaintiff was
an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
“aggrieved employee” within the meaning of Labor Code § 2699 (c).

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1 4. Defendant C-Hiree Personnel Inc. is corporation organized and existing under the
2 laws of California and a citizen of California based on Plaintiff's information and belief.

3 5. Defendant C-Hiree & Personnel, LLC is a limited liability company organized and
4 existing under the laws of California and a citizen of California based on Plaintiff's information
5 and belief.

6 6. Defendant National Retail Transportation, Inc. is a corporation organized and
7 existing under the laws of Pennsylvania and a citizen of California based on Plaintiff's
8 information and belief.

9 7. Defendant National Retail Systems, Inc. is a corporation organized and existing
10 under the laws of Pennsylvania and a citizen of California based on Plaintiff's information and
11 belief.

12 8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
13 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
14 is informed and believes and thereon alleges that said Defendants are legally responsible for the
15 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
16 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
17 when ascertained.

18 9. Plaintiff is informed and believes and thereon alleges that, at all relevant times
19 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
20 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
21 within the course and scope of such agency, employment, direction and control, and with the
22 approval and ratification of each of the other Defendants.

23 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
24 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
25 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
26 Members or otherwise complying with their rights in accordance with applicable California labor
27 laws as alleged herein.

28 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
described class in accordance with applicable laws as alleged herein.

III. CLASS ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as non-exempt, hourly employees including, but not limited to warehouse and distribution center workers, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

15. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

16. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime, meal period premium, rest period premium, and reporting time;

B. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

C. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

D. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;



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1 E. Whether Defendants knowingly and intentionally failed to provide the
2 class with accurate and complete itemized wage statements;

3 F. Whether Defendants willfully failed to provide the class with timely final
4 wages;

5 G. Whether Defendants engaged in unfair competition within the meaning of
6 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

7 H. Whether Class Members are entitled to restitution of money or property
8 that Defendants may have acquired from them through alleged Labor Code violations.

9 17. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
10 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
11 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
12 Code, the Wage Order, and the Business and Professions Code.

13 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
14 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
15 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
16 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
17 Members.

18 19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
19 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
20 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
21 Plaintiff and absent Class Members.

22 20. **Superiority:** A class action is vastly superior to other available means for fair and
23 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
24 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
25 and efficiently prosecute their common claims in a single forum without the unnecessary
26 duplication of effort and expense that numerous individual actions would entail. In addition, the
27 monetary amounts due to many individual Class Members are likely to be relatively small and
28 would thus make it difficult, if not impossible, for individual Class Members to both seek and
obtain relief. Moreover, a class action will serve an important public interest by permitting Class
Members to effectively pursue the recovery of monies owed to them. Further, a class action will
prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.



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IV. STATEMENT OF FACTS

21. IWC Wage Order 9-2001 (“the Wage Order”) applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean:

[A]ny industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Plaintiff, and all other Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff and all other Class Members worked for, one or more establishments operated as a distribution center and warehouse. Accordingly, Plaintiff and all other Class Members are entitled to the protections the Wage Order provides.

22. On approximately March 18, 2022, the Defendants began to employ Plaintiff in Ontario, California in the position of hourly, non-exempt warehouse worker. The Defendants continuously employed him in that capacity until on or about May 13, 2022 when his employment ended.

23. At all relevant times, the Defendants issued wages to Plaintiff and all other Class Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Defendants classified Plaintiff and all other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

24. At all relevant times, the Defendants failed to compensate Plaintiff and all other Class Members for all hours worked at the applicable minimum or regular rates of pay. Defendants required Plaintiff and all other Class Members to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, Defendants required Plaintiff and all other Class Members to clock out, then undergo a five-minute security check before leaving the premises. The Defendants failed to pay Plaintiff and all other Class Members for their time spent waiting for their security checks in and out.

25. At all relevant times, the Defendants failed to compensate Plaintiff and all other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a



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1 week, and for the first eight hours of the seventh day of the workweek. Defendants required
2 Plaintiff and all other Class Members to work four 10-hour shifts. However, Defendants failed
3 to pay overtime premium pay rates to Plaintiff and the Class Members for the ninth and 10th hour
4 of each shift.

5 26. At all relevant times, the Defendants failed to provide Plaintiff and all other Class
6 Members with all timely 30-minute, off-duty meal periods. Defendants required Plaintiff and all
7 other Class Members to undergo a five-minute security check before clocking in for work and
8 entering their assigned work areas. Likewise, Defendants required Plaintiff and all other Class
9 Members to clock out, then undergo a five-minute security check before leaving the premises.
10 This prevented Plaintiff and the Class Members from leaving the premises for a full 30-minute
11 meal period. Additionally, Defendants regularly ordered Plaintiff and all other Class Members to
12 resume work before their meal period reached 30 minutes. Consequently, Defendants forced
13 Plaintiff and all other Class Members to forgo a portion of their required meal periods. The
14 Defendants also failed to pay premium wages for days on which they failed to provide Plaintiff
15 and all other Class Members with meal periods as required by law.

16 27. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
17 all other Class Members to take ten-minute, off-duty rest breaks every four hours worked or major
18 portion thereof. Defendants required Plaintiff and all other Class Members to undergo a five-
19 minute security check before clocking in for work and entering their assigned work areas.
20 Likewise, Defendants required Plaintiff and all other Class Members to clock out, then undergo
21 a five-minute security check before leaving the premises. This prevented Plaintiff and the Class
22 Members from leaving the premises for their full 10-minute rest breaks. Additionally, Defendants
23 regularly ordered Plaintiff and all other Class Members to resume work before their rest breaks
24 reached 10 minutes. Consequently, Defendants forced Plaintiff and all other Class Members to
25 forgo portions of their rest breaks. The Defendants also failed to pay premium wages for days on
26 which they failed to authorize and permit Plaintiff and all other Class Members to take rest breaks
27 as required by law.

28 28. At all relevant times, the Defendants failed to pay to Plaintiff and all other Class
Members reporting time pay they earned. Defendants required Plaintiff and all other Class
Members to report to the warehouse on days they were not needed. Defendants did not
compensate Plaintiff and all other Class Members for reporting time when Defendants sent them



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home without putting them to work.

29. At all relevant times, the Defendants required Plaintiff and all other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all other Class Members to supply protective gear to perform their job duties. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class Members for these items. Defendants required steel-toed boots in the warehouse, but did not pay for, provide, nor reimburse Plaintiff and other Class Members for them.

30. At all relevant times, the Defendants failed to issue to Plaintiff and all other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Plaintiff and all other Class Members the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time wages earned, and related information.

31. At all relevant times, the Defendants also failed to timely pay Plaintiff and all other Class Members all earned wages as described above during and at the conclusion of employment.

32. At all relevant times, the Defendants failed to maintain accurate employee records of Plaintiff and all other Class Members.

33. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off-duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular, overtime, and doubletime wages for work performed while clocked out;
- F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;



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1 G. Not provided with accurate and complete wage statements; and
2 H. Not timely paid all earned and unpaid wages at the time their employment
3 ended.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
6 **CORRECT RATES**

7 **Lab. Code §§ 510, 1194, 1197, and 1198**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

9 34. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 35. At all relevant times, Plaintiff and the Class Members have been non-exempt
11 employees entitled to the protections of both the Labor Code and the Wage Order.

12 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
13 **THE CORRECT RATES OF PAY**

14 36. Section 2 of the Wage Order defines “hours worked” as “the time during which an
15 employee is subject to the control of an employer and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so.”

17 37. Section 3 of the Wage Order states:

18 The following overtime provisions are applicable to employees 18 years of
19 age or over and to employees 16 or 17 years of age who are not required by
20 law to attend school and are not otherwise prohibited by law from engaging
21 in the subject work. Such employees shall not be employed more than eight
22 (8) hours in any workday or more than 40 in a workweek unless the
23 employee receives one and one half (1½) times such employee’s regular
24 rate of pay for all hours worked over 40 hours in the workweek. Eight (8)
25 hours of labor constitutes a day’s work. Employment beyond eight (8) hours
26 in any workday or more than six (6) days in any workweek is permissible
27 provided the employee is compensated for such overtime at not less than:

- 28 (a) One and one-half (1½) times the employee’s regular rate of pay for
all hours worked in excess of eight (8) hours up to and including
twelve (12) hours in any workday, and for the first eight (8) hours
worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in
excess of 12 hours in any workday and for all hours worked in
excess of eight (8) hours on the seventh (7th) consecutive day of
work in a workweek. The overtime rate of compensation required to



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1 be paid to a nonexempt full-time salaried employee shall be
2 computed by using the employee's regular hourly salary as one
3 fortieth (1/40) of the employee's weekly salary.

4 38. Section 4 of the Wage Order requires an employer to pay non-exempt employees
5 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
6 an employer has actual or constructive knowledge that employees are working.

7 39. Labor Code section 510 states:

8 Eight hours of labor constitutes a day's work. Any work in excess of eight
9 hours in one workday and any work in excess of 40 hours in any one
10 workweek and the first eight hours worked on the seventh day of work in
11 any one workweek shall be compensated at the rate of no less than one and
12 one-half times the regular rate of pay for an employee. Any work in excess
13 of 12 hours in one day shall be compensated at the rate of no less than twice
14 the regular rate of pay for an employee. In addition, any work in excess of
15 eight hours on any seventh day of a workweek shall be compensated at the
16 rate of no less than twice the regular rate of pay of an employee. Nothing in
17 this section requires an employer to combine more than one rate of overtime
18 compensation in order to calculate the amount to be paid to an employee for
19 any hour of overtime work.

20 40. Labor Code section 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum wage required under the applicable Wage Order.

22 41. Labor Code section 1197 makes it unlawful for an employer to pay an employee
23 less than the minimum wage required under the applicable Wage Order for all hours worked
24 during a payroll period.

25 42. Labor Code section 1198 makes it unlawful for an employer to employ an
26 employee under conditions that violate the Wage Order.

27 43. In conjunction, these provisions of the Labor Code require employers to pay non-
28 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known
that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

44. The Defendants required Plaintiff and all other Class Members to undergo a five-
minute security check before clocking in for work and entering their assigned work areas.
Likewise, Defendants required Plaintiff and all other Class Members to clock out, then undergo



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1 a five-minute security check before leaving the premises. The Defendants failed to pay Plaintiff
2 and all other Class Members for the time spent waiting to be checked in and out before clocking
3 in and after clocking out.

4 45. The Defendants required Plaintiff and all other Class Members to work four, 10-
5 hour shifts. The Defendants forced Plaintiff and all other Class Members to work 10-hour shifts,
6 though they did not pay the employees overtime or premium rates for the ninth and tenth hours
7 of work. Consequently, the Defendants required Plaintiff and all other Class Members to work
8 overtime hours without compensation.

9 46. At all relevant times during the applicable limitations period, Defendants failed to
10 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
11 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
12 doubletime hours, respectively, that they worked at the correct rates of pay.

13 47. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
14 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
15 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
16 rates of pay as required by California law.

17 **B. UNPAID REPORTING TIME PAY**

18 48. Under Section 5 of the Wage Order

19 [e]ach workday an employee is required to report for work and does report,
20 but is not put to work or is furnished less than half said employee's usual or
21 scheduled day's work, the employee shall be paid for half the usual or
22 scheduled day's work, but in no event for less than two (2) hours nor more
23 than four (4) hours, at the employee's regular rate of pay, which shall not
24 be less than the minimum wage.

25 49. The Defendants required Plaintiff and all other Class Members to report for a full
26 day of work (eight or more hours) and, instead of furnishing them with half of more of their usual
27 scheduled day's work, sent them home. Furthermore, the Defendants failed to pay Plaintiff and
28 all other Class Members at least two (2) hours at their regular rates of pay. Defendants required
Plaintiff and all other Class Members to report to the warehouse on days they were not needed.
Defendants did not compensate Plaintiff and all other Class Members for reporting time when
Defendants sent them home without putting them to work. This is a violation of the Wage Order
and also the Labor Code (§ 1198).



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1 50. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
2 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
3 failure to pay Plaintiff and the other Class Members at least two (2) hours at their regular rates of
4 pay as required by California law.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE MEAL PERIODS**

7 **Lab. Code §§ 226.7 and 512**

8 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

9 51. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

10 52. At all relevant times during the applicable limitations period, Plaintiff and the
11 Class Members have been employees of Defendants and entitled to the benefits and protections
12 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

13 53. In relevant part, California Labor Code § 1198 states:

14 The maximum hours of work and the standard conditions of labor fixed by
15 the commission shall be the maximum hours of work and the standard
16 conditions of labor for employees. The employment of any employee for
17 longer hours than those fixed by the order or under conditions of labor
18 prohibited by the order is unlawful.

19 54. In relevant part, In relevant part, California Labor Code § 512 states:

20 An employer shall not employ an employee for a work period of more than
21 five hours per day without providing the employee with a meal period of
22 not less than 30 minutes, except that if the total work period per day of the
23 employee is no more than six hours, the meal period may be waived by
24 mutual consent of both the employer and employee.

25 An employer shall not employ an employee for a work period of more than
26 10 hours per day without providing the employee with a second meal period
27 of not less than 30 minutes, except that if the total hours worked is no more
28 than 12 hours, the second meal period may be waived by mutual consent of
the employer and the employee only if the first meal period was not waived.

55. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more



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1 than five (5) hours without a meal period of not less than 30 minutes,
2 except that when a work period of not more than six (6) hours will
3 complete the day's work the meal period may be waived by mutual
4 consent of the employer and the employee.

5 (B) An employer may not employ an employee for a work period of
6 more than ten (10) hours per day without providing the employee
7 with a second meal period of not less than 30 minutes, except that if
8 the total hours worked is no more than 12 hours, the second meal
9 period may be waived by mutual consent of the employer and the
10 employee only if the first meal period was not waived.

11 (C) Unless the employee is relieved of all duty during a 30 minute meal
12 period, the meal period shall be considered an "on duty" meal period
13 and counted as time worked. An "on duty" meal period shall be
14 permitted only when the nature of the work prevents an employee
15 from being relieved of all duty and when by written agreement
16 between the parties an on-the-job paid meal period is agreed to. The
17 written agreement shall state that the employee may, in writing,
18 revoke the agreement at any time.

19 (D) If an employer fails to provide an employee a meal period in
20 accordance with the applicable provisions of this Order, the
21 employer shall pay the employee one (1) hour of pay at the
22 employee's regular rate of compensation for each workday that the
23 meal period is not provided.

24 (E) In all places of employment where employees are required to eat on
25 the premises, a suitable place for that purpose shall be designated.

26 56. In relevant part, California Labor Code § 226.7 states:

27 (b) An employer shall not require an employee to work during a meal
28 or rest period mandated pursuant to an applicable statute, or
applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board,
or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest
period in accordance with a state law, including, but not limited to,
an applicable statute or applicable regulation, standard, or order of
the Industrial Welfare Commission, the Occupational Safety and
Health Standards Board, or the Division of Occupational Safety and
Health, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work
day that the meal or rest period is not provided.



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1 57. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
2 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
3 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
4 to a second 30-minute meal period when they worked more than 10 hours in a workday.

5 58. Defendants intentionally failed to provide Plaintiff and the Class Members with
6 all required 30-minute duty free meal periods in accordance with the Wage Order. Defendants
7 required Plaintiff and all other Class Members to undergo a five-minute security check before
8 clocking in for work and entering their assigned work areas. Likewise, Defendants required
9 Plaintiff and all other Class Members to clock out, then undergo a five-minute security check
10 before leaving the premises. This prevented Plaintiff and the Class Members from leaving the
11 premises for a full 30-minute meal period. Additionally, Defendants regularly ordered Plaintiff
12 and all other Class Members to resume work before their meal period reached 30 minutes.
13 Consequently, Defendants forced Plaintiff and all other Class Members to forgo a portion of their
14 required meal periods.

15 59. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
16 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
17 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
18 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
19 Members with timely meal periods.

20 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times
21 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
22 which resulted in Defendants not providing the and the Class Members with all off-duty meal
23 periods required by California law.

24 61. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
25 suffered damages in amounts subject to proof to the extent they were not paid additional wages
26 owed for all meal periods not provided to them.

27 62. By reason of the above, Plaintiff and the Class Members are entitled to premium
28 wages for workdays in which one or more meal periods were not provided to them pursuant to
California Labor Code § 226.7.

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THIRD CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

63. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

64. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 1198, and the Wage Order.

65. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

66. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

67. In relevant part, California Labor Code § 226.7 states:

(a) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the



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Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (b) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

68. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

69. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. Defendants required Plaintiff and all other Class Members to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, Defendants required Plaintiff and all other Class Members to clock out, then undergo a five-minute security check before leaving the premises. This prevented Plaintiff and the Class Members from leaving the premises for a full 10-minute rest break. Additionally, Defendants regularly ordered Plaintiff and all other Class Members to resume work before their rest break reached 10 minutes. Consequently, Defendants forced Plaintiff and all other Class Members to forgo a portion of their required rest breaks.

70. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

71. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed



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1 to authorize and permit them to take 10-minute rest periods every four hours worked or major
2 fraction thereof.

3 72. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
5 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
6 take all rest breaks required by California law.

7 73. Defendants failed to provide Plaintiff with all required rest breaks in accordance
8 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
9 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
10 which resulted in Defendants not providing the Class Members with all rest breaks required by
11 California law.

12 74. Defendants failed to pay Plaintiff the additional wages required by California
13 Labor Code § 226.7 for all rest breaks not provided to him. Plaintiff is informed and believes and
14 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
15 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
16 Class Members with additional wages for all rest breaks not provided to them as required by
17 California Labor Code § 226.7.

18 75. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
19 suffered damages in amounts subject to proof to the extent they were not paid additional wages
20 owed for all rest breaks not provided to them.

21 76. By reason of the above, Plaintiff and the Class Members are entitled to premium
22 wages for workdays in which one or more rest breaks were not provided to them pursuant to
23 California Labor Code § 226.7.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO INDEMNIFY**

26 **Lab. Code § 2802**

27 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

28 77. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

78. In pertinent part, California Labor Code § 2802(a) states: "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties." Additionally, the Wage Order states,



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(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(A) and (B).

79. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

80. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

81. As described above, the Defendants required Plaintiff and all other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Plaintiff and all other Class members to supply protective gear to perform their job duties. However, the Defendants did not provide these items and did not reimburse Plaintiff and the other Class members for these items. Defendants required steel-toed boots in the warehouse, but did not pay for, provide, nor reimburse Plaintiff and other Class Members for them.

82. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

FIFTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE STATEMENTS

83. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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1 84. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
2 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement showing:

- 4 A. Gross wages earned;
- 5 B. Total hours worked by the employee, except for any employee whose
6 compensation is solely based on a salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 8 C. The number of piece rate units earned and any applicable piece rate if the
9 employee is paid on a piece-rate basis;
- 10 D. All deductions, provided that all deductions made on written orders of the
11 Employee may be aggregated and shown as one item;
- 12 E. Net wages earned;
- 13 F. The inclusive dates of the period for which the employee is paid;
- 14 G. The name of the employee and his or her social security number, except
15 that by January 1, 2008, only the last four digits of his or her social security number or an
16 employee identification number other than a social security number may be shown on the itemized
17 statement;
- 18 H. The name and address of the legal entity that is the employer; and
- 19 I. All applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 85. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
22 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
23 the employer fails to provide accurate and complete information as required by California Labor
24 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
25 alone one or more of the following:

- 26 A. The amount of the gross wages or net wages paid to the employee during
27 the pay period or any of the other information required to be provided on the itemized wage
28 statement pursuant to California Labor Code § 226(a);
- B. Which deductions the employer made from gross wages to determine the
net wages paid to the employee during the pay period;
- C. The name and address of the employer and, if the employer is a farm labor



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contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

86. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

87. Similarly, section 6(B) of the Wage Order states:

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee’s social security number; and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee’s wages.

88. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Class Members all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). Defendants knowingly and intentionally did not issue either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, statements to Plaintiff and the Class



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Members that state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all reporting time wages earned, and all rest break premium wages earned.

89. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

90. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

Lab. Code §§ 201, 201.3, 202, and 203

(By Plaintiff, on behalf of himself and the Class, against all Defendants)

91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

92. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201, 201.3, 202, and 203, and the Wage Order.

93. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

94. Labor Code § 201.3 requires temporary services employers to pay the earned employee's wages on a weekly basis. Defendants paid Plaintiff and all Aggrieved Employees on a weekly basis, but that pay did not include all earned wages.

95. Plaintiff is informed and believes that Defendants' failures to weekly and timely



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1 pay Plaintiff and the Aggrieved Employees all their earned and unpaid wages have been willful
2 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
3 violate the requirements of the Labor Code and the Wage Order even though, at all relevant times,
4 they have had the ability to comply with those legal requirements.

5 96. Labor Code § 202 provides that all earned and unpaid wages of an employee who
6 quits after providing at least 72-hours' notice before quitting are due and payable at the time of
7 quitting and that all earned and unpaid wages of an employee who quits without providing at least
8 72-hours' notice before quitting are due and payable within 72 hours.

9 97. The Defendants failed to pay Plaintiff and all other Class Members whose
10 employment ended all the earned, but unpaid wages described above by the conclusion of their
11 employment including minimum wages, regular wages, overtime wages, doubletime wages,
12 unprovided meal period premium wages, unprovided rest break premium wages, reporting time
13 pay, and related compensation.

14 98. By failing to pay such earned wages to Plaintiff and the Class Members,
15 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
16 § 201 or § 202.

17 99. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
18 and the Class Members all their earned and unpaid wages (described above) have been willful in
19 that, at all relevant times, Defendants have deliberately maintained policies and practices that
20 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
21 they have had the ability to comply with those legal requirements.

22 100. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
23 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
24 penalties for each Class Member.

25 **SEVENTH CAUSE OF ACTION**

26 **UNFAIR COMPETITION**

27 **Bus. & Prof. Code §§ 17200, et seq.**

28 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

102. At all relevant times during the applicable limitations period, Plaintiff and the
Class Members have been employees of Defendants and entitled to the benefits and protections



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of the Business and Professions Code §§ 17200, *et seq.*

103. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

104. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of regular wages, overtime wages, reporting time wages, missed meal period premium wages, missed rest period premium wages, uniform and protective gear expenses, and comparable money and property.

105. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

106. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California, against all Defendants)

107. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

108. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning November 30, 2021, and ending on the date that final judgment is entered in this action.

109. Labor Code § 204 states:

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed



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between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

110. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

111. During the applicable time period, Defendants violated California Labor Code §§ 201, 201.3, 202, 203, 204, 226 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

112. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

113. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 201.3, 202, 203, 204, 226 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802 during the applicable limitations period in the following amounts:



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1 A. For violations of California Labor Code §§ 201.3 and 204, one hundred
2 dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
3 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
4 (penalty amounts established by California Labor Code § 210).

5 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
6 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
7 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
8 California Labor Code § 226.3).

9 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
10 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
11 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
12 established by California Labor Code § 558).

13 D. For violations of California Labor Code § 1174, five hundred dollars
14 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
15 amounts established by Labor Code § 1174.5).

16 E. For violations of California Labor Code § 1197, one hundred dollars
17 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
18 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
19 (regardless of whether the initial violations were intentionally committed) (penalty amounts
20 established by California Labor Code § 1197.1)

21 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
22 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
23 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
24 period for each subsequent violation (penalty amounts established by California Labor Code §
25 2699(f)(2)).

26 114. Plaintiff has complied with the procedures for bringing suit specified in California
27 Labor Code § 2699.3. By letter dated November 30, 2022, Plaintiff filed written notice online
28 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
certified mail to Defendants of the specific provisions of the California Labor Code alleged to
have been violated, including the facts and theories to support the alleged violations. A true and
correct copy of the notice to the LWDA dated November 30, 2022 is attached as Exhibit A.



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1 Plaintiff submitted his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed
2 to take action in response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff
3 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not
4 intend to investigate these allegations. Plaintiff could not file this amended complaint until March
27, 2023 because the Court had yet to provide him with a case number for this lawsuit.

5 115. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
6 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
7 connection with their claims for civil penalties.

8 **V. PRAYER FOR RELIEF**

9 116. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
10 relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiff's claims for violations of California law;

13 B. An order that Plaintiff be appointed class representative;

14 C. An order that counsel for Plaintiff be appointed class counsel;

15 D. Unpaid wages, including minimum, regular, overtime, doubletime, missed
meal period, missed rest period, and reporting time wages;

16 E. Liquidated damages;

17 F. Statutory penalties, including waiting time penalties;

18 G. Civil penalties;

19 H. Restitution;

20 I. Declaratory relief;

21 J. Actual damages;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24 M. Reasonable attorneys' fees; and

25 N. Such other relief as the Court deems just and proper.

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VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: 04 / 11 / 2023

By: 
DAVID G. SPIVAK
JENICA P. LEONARD, Attorneys for
Plaintiff(s), MAX PAILET, and all
others similarly situated



SPIVAK LAW
EMPLOYEE RIGHTS

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EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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*** SENT BY ELECTRONIC SUBMISSION ***

November 30, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Max Paillet / C-Hiree Personnel Inc., C-Hiree & Personnel, LLC, National
Retail Transportation, Inc., and National Retail Systems, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Max Paillet (hereafter “Paillet” or “Complainant”) provides notice that C-Hiree Personnel Inc., a California corporation, C-Hiree & Personnel, LLC, a California limited liability company, National Retail Transportation, Inc., a Pennsylvania corporation, National Retail Systems, Inc., a Pennsylvania corporation, and related entities (collectively “the C-Hiree Employers” or “the Employers”) violated his rights and those of all other individuals the C-Hiree Employers have employed or otherwise contracted with in California as non-exempt, hourly employees including, but not limited to warehouse workers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 201.3, 202, 203, 204, 226 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Paillet hereby provides this notice to the Labor & Workforce Development Agency and the C-Hiree Employers and their agents and representatives.

At all relevant times, the C-Hiree Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Paillet and all other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately March 18, 2022, the C-Hiree Employers began to employ Paillet in Ontario in the position of hourly, non-exempt warehouse and distribution center worker. The C-Hiree Employers continuously employed him in that capacity until on or about May 13, 2022, when his employment ended.

At all relevant times, the C-Hiree Employers issued wages to Paillet and all other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the C-Hiree Employers classified Paillet and all other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay.

The C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The C-Hiree Employers required Paillet and all other Aggrieved Employees to work four, 10-hour shifts. The C-Hiree Employers forced Paillet and all other Aggrieved Employees to work 10-hour shifts, though they did not pay the employees overtime premium rates for the ninth and tenth hours of work. Consequently, the C-Hiree Employers required Paillet and all other Aggrieved Employees to work overtime hours without overtime premium compensation.

The C-Hiree Employers required Paillet and all other Aggrieved Employees to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, the C-Hiree Employers required Paillet and all other Aggrieved Employees to clock out, then undergo a five-minute security check before leaving the premises. The C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees for time spent on these clocking in and clocking out security check procedures and therefore denied Paillet and all other Aggrieved Employees their minimum wages for all hours worked.

At all relevant times, the C-Hiree Employers failed to provide Paillet and all other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The C-Hiree

Employers required Paillet and all other Aggrieved Employees to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, the C-Hiree Employers required Paillet and all other Aggrieved Employees to clock out, then undergo a five-minute security check before leaving the premises. This prevented Paillet and the Aggrieved Employees from leaving the premises for a full 30-minute meal period. Additionally, the C-Hiree Employers regularly ordered Paillet and all other Aggrieved Employees to resume work before their meal period reached 30-minutes. Consequently, the C-Hiree Employers forced Paillet and all other Aggrieved Employees to forgo a portion of each of their required meal periods. The C-Hiree Employers also failed to pay premium wages for days on the C-Hiree Employers failed to provide Paillet and all other Aggrieved Employees with meal periods as required by law.

At all relevant times, the C-Hiree Employers failed to authorize and permit Paillet and all other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The C-Hiree Employers required Paillet and all other Aggrieved Employees to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, the C-Hiree Employers required Paillet and all other Aggrieved Employees to clock out, then undergo a five-minute security check before leaving the premises. This prevented Paillet and the Aggrieved Employees from leaving the premises for their 10-minute rest breaks. Additionally, the C-Hiree Employers regularly ordered Paillet and all other Aggrieved Employees to resume work before their rest breaks reached 10-minutes. Consequently, the C-Hiree Employers forced Paillet and all other Aggreived Employees to forgo a portion of their required rest breaks. The C-Hiree Employers also failed to pay premium wages for days on which the C-Hiree Employers failed to authorize and permit Paillet and all other Aggrieved Employees to take rest breaks as required by law.

The C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees reporting time pay they earned. The C-Hiree Employers required Paillet and all other Aggrieved Employees to report to the warehouse on days they were not needed. The C-Hiree Employers did not compensate Paillet and all other Aggrieved Employees for reporting time when the Employers sent them home without putting them to work.

At all relevant times, the C-Hiree Employers required Paillet and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The C-Hiree Employers required Paillet and all other Aggrieved Employees to supply

protective gear and related items to perform their job duties. The C-Hiree Employers required steel-toed boots in the warehouse, but did not pay for, provide, nor reimburse Paillet and all other Aggrieved Employees for them.

At all relevant times, the C-Hiree Employers failed to issue to Paillet and all other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The C-Hiree Employers knowingly and intentionally failed to state on the wage statements they issued to Paillet and all other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time wages earned, and other required information.

The C-Hiree Employers also failed to timely pay Paillet and all other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The C-Hiree Employers failed to maintain accurate employee records of Paillet and all other Aggrieved Employees.

For the reasons stated herein, Paillet alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all other Aggrieved Employees:

- (a) The C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The C-Hiree Employers failed to provide Paillet and all other Aggrieved Employees all meal periods in compliance with California law;
- (c) The C-Hiree Employers failed to authorize and permit Paillet and all other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees at one hour's pay for each day in which the C-Hiree

Employers failed to provide them with one or more meal periods as required by law;

- (e) The C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees at one hour's pay for each day in which the C-Hiree Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The C-Hiree Employers failed to pay to Paillet and all other Aggrieved Employees reporting time pay they earned;
- (g) The C-Hiree Employers failed to indemnify Paillet and all other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (h) The C-Hiree Employers knowingly and intentionally failed to provide Paillet and all other Aggrieved Employees with accurate and complete wage statements;
- (i) The C-Hiree Employers willfully failed to timely pay Paillet and all other Aggrieved Employees all earned and unpaid wages during their employment with the C-Hiree Employers and when their employment ended; and
- (j) The C-Hiree Employers failed to maintain accurate employment records pertaining to Paillet and all other Aggrieved Employees.

Accordingly, Paillet now seeks civil penalties on behalf of himself and all other Aggrieved Employees based on the C-Hiree Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one

place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the C-Hiree Employers, Paillet, and all other Aggrieved Employees were covered by the Wage Order because the C-Hiree Employers operated, and Paillet, and all other Aggrieved Employees worked for, one or more establishments operated as a distribution center and warehouse. Accordingly, Paillet and all other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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. 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 at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked,

including hours spent working “off-the-clock” (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The C-Hiree Employers required Paillet and all other Aggrieved Employees to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, the C-Hiree Employers required Paillet and all other Aggrieved Employees to clock out, then undergo a five-minute security check before leaving the premises. The C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees for time spent on these clocking in and clocking out security check procedures and therefore denied Paillet and all other Aggrieved Employees their minimum wages for all hours worked.

The C-Hiree Employers required Paillet and all other Aggrieved Employees to work four, 10-hour shifts. The C-Hiree Employers forced Paillet and all other Aggrieved Employees to work 10-hour shifts, though they did not pay the employees overtime premium rates for the ninth and tenth hours of work. The C-Hiree Employers required Paillet and all other Aggrieved Employees to work overtime hours without overtime premium compensation.

At all relevant times during the applicable limitations period, the C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Paillet now seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Unpaid Reporting Time Pay

Under Section 5 of the Wage Order,

[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

The C-Hiree Employers required Paillet and all other Aggrieved Employees to report for a full day of work (eight or more hours) and, instead of furnishing them with half or more of their usual scheduled day's work, sent them home. Furthermore, the C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees at least two (2) hours at their regular rates of pay. The C-Hiree Employers required Paillet and all other Aggrieved Employees to report to the warehouse on days they were not needed. The C-Hiree Employers did not compensate Paillet and all other Aggrieved Employees for reporting time when the C-Hiree Employers sent them home without putting them to work. This is a violation of the Wage Order and also the Labor Code (§ 1198). Accordingly, Paillet seeks civil penalties from the C-Hiree Employers on behalf of himself and all other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee

with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.

At all relevant times, the C-Hiree Employers failed to provide Paillet and all other Aggrieved Employees with all timely meal periods. The C-Hiree Employers denied Paillet and all other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The C-Hiree Employers required Paillet and all other Aggrieved Employees to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, the C-Hiree Employers required Paillet and all other Aggrieved Employees to clock out, then undergo a five-minute security check before leaving the premises. This prevented Paillet and the Aggrieved Employees from leaving the premises for a full 30-minute meal period. Additionally, the C-Hiree Employers regularly ordered Paillet and all other Aggrieved Employees to resume work before their meal period reached 30-minutes. Consequently, the C-Hiree Employers forced Paillet and all other Aggrieved Employees to forgo a portion of each of their required meal periods. Furthermore, the C-Hiree Employers failed to pay premium wages for days on which they failed to provide Paillet and all other Aggrieved Employees with timely meal periods. Accordingly, Paillet now seeks civil penalties for these Labor Code violations that the C-Hiree Employers have committed against him and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.

The C-Hiree Employers failed to authorize and permit Paillet and all other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The C-Hiree Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The C-Hiree Employers required Paillet and all other Aggrieved Employees to undergo a five-minute security check before clocking in for work and entering their assigned work areas. Likewise, the C-Hiree Employers required Paillet and all other Aggrieved Employees to clock out, then undergo a five-minute security check before leaving the premises. This prevented Paillet and the Aggrieved Employees from leaving the premises for a full 10-minute rest breaks. Additionally, the C-Hiree Employers regularly ordered Paillet and all other Aggrieved Employees to resume work before their rest breaks reached 10-minutes. Consequently, the C-Hiree Employers forced Paillet and all other Aggrieved Employees to forgo a portion of each of their required rest breaks. Moreover, the C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees premium wages on workdays the C-Hiree Employers did not provide Paillet and all other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Paillet now seeks civil

penalties for these Labor Code violations that the C-Hiree Employers have committed against him and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states:

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the C-Hiree Employers required Paillet and all other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The C-Hiree Employers required Paillet and all other Aggrieved Employees to supply protective gear and related items to perform their job duties. However, the C-Hiree Employers did not provide these items and did not reimburse Paillet and the other Aggrieved Employees for these items. The C-Hiree Employers required steel-toed boots in the warehouse, but did not pay for, provide, nor reimburse Paillet and all other Aggrieved Employees for them. Accordingly, Paillet seeks civil penalties for these Labor Code violations that the C-Hiree Employers have committed against him and all other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the C-Hiree Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The C-Hiree Employers failed to state in the wage statements they issued to Paillet and all other Aggrieved Employees all their hours worked, and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The C-Hiree Employers knowingly and intentionally failed to state on the wage statements they issued to Paillet and all other Aggrieved Employees the earned, but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time wages earned, and other required information. Accordingly, Paillet seeks civil penalties for the Labor Code violations that the C-Hiree Employers have committed against him, and all other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of

Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees for wages earned including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, reporting time pay, and related compensation, at the intervals stated above. As a result, the C-Hiree Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Paillet now seeks civil penalties for the Labor Code violations that the C-Hiree Employers have committed against him and all other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 201.3, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages 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 so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Labor Code § 201.3 requires a temporary services employer to pay all earned employee wages on a weekly basis. The C-Hiree Employers paid Paillet and all other Aggrieved Employees weekly, however they failed to pay Paillet and all other Aggrieved Employees all their earned wages on a weekly basis.

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201, 201.3, and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The C-Hiree Employers failed to pay Paillet and all other Aggrieved Employees whose employment ended all the earned, but unpaid wages described above by the conclusion of their employment, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, reporting time pay, and related compensation. By failing to pay Paillet and all other Aggrieved Employees as set forth above at the end of employment, the C-Hiree Employers are liable for violations of Labor Code §§ 201, 201.3, 202, and 203. Accordingly, on behalf of himself and all other Aggrieved Employees, Paillet seeks civil penalties from the C-Hiree Employers as follows:

1. For violations of Labor Code; § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 201.3, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201.3 occurred,

and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201.3 occurred (penalties set by Labor Code § 210);

3. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
4. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors)
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision(c) of Section 1174 or accurate and complete

records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states:

Every employer shall keep accurate information with respect to each employee including the following:

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The C-Hiree Employers failed to compensate Paillet and all other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, all reporting time wages earned, and related information. As a result, the C-Hiree Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Paillet and all other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Paillet seeks civil penalties on behalf of himself and all other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Max Paillet will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Mr. Max Paillet

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Re: Max Paillet

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