

Tuvia Korobkin, Esq. # 268066
 tuvia@abramsonlabor.com
 W. Zev Abramson, Esq. # 289387
 wza@abramsonlabor.com
 Rijenea Appling, Esq. # 346329
 rijenea@abramsonlabor.com
ABRAMSON LABOR GROUP
 11846 Ventura Boulevard, Suite 100
 Studio City, California 91604
 Tel: (213) 493-6300
 Fax: (213) 723-2522

Attorneys for Plaintiff

FILED
 Superior Court of California
 County of Los Angeles

01/18/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JUAN GAYTAN, on behalf of himself and all
 others similarly situated,

Plaintiff,

vs.

CIS INTERNATIONAL DISTRIBUTORS
 INC., a California corporation; and DOES 1
 through 100, Inclusive,

Defendants.

Case No. 22STCV35612

**FIRST AMENDED CLASS AND
 REPRESENTATIVE CLASS ACTION
 COMPLAINT FOR:**

- (1) **MINIMUM WAGE VIOLATIONS
 (LABOR CODE §§ 204, 558, 1182.12,
 1194, 1194.2, 1197, 1198);**
- (2) **FAILURE TO PAY OVERTIME
 WAGES (LABOR CODE §§ 204, 510,
 558, 1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 512, 1198);**
- (4) **REST PERIOD VIOLATIONS
 (LABOR CODE §§ 226.7, 516, 1198);**
- (5) **WAGE STATEMENT VIOLATIONS
 (LABOR CODE § 226, *et seq.*);**
- (6) **WAITING TIME PENALTIES
 (LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS. &
 PROF. CODE § 17200, *et seq.*);**
- (8) **CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
 UNLIMITED CIVIL CASE**

1 Plaintiff Juan Gaytan (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against CIS International
3 Distributors Inc., a California corporation; and Does 1 through 100, inclusive (collectively,
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
9 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*; and Industrial Welfare
10 Commission Wage Order No. 7 (“Wage Order 7”), in addition to seeking declaratory relief and
11 restitution. This class action is brought pursuant to California Code of Civil Procedure section
12 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
13 the amount in controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
18 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*; California
28 Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 7, which

1 sets employment standards for the mercantile industry, which includes businesses operated for
2 the purpose of purchasing, selling, or distributing goods at wholesale or retail.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
5 business as an exotic fish and reptile wholesaler, and that they employed Plaintiff and other
6 similarly situated non-exempt employees within Los Angeles County and the state of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
11 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the
14 unlawful employment practices, wrongs, injuries, and damages complained of herein.

15 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

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

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
27 Members (as defined in Paragraph 19).

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GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee for several years until approximately November 22, 2021.

10. During Plaintiff's employment with Defendants, Plaintiff would clock out for his rest periods, which, pursuant to California law, must be paid time. However, rather than pay Plaintiff for his full rest periods, Defendants would deduct his clocked-out time from his pay, and then would generally add an extra 10 or 20 minutes per day to Plaintiff for "paid break" time. Plaintiff, however, often was clocked out longer than 10 minutes for rest breaks, and was thus underpaid for his rest break time. For example, on November 18, 2021, Plaintiff's time records reflect that he clocked out for two rest breaks, one of which was 19 minutes long and the other of which was 11 minutes long. But rather than paying Plaintiff for all 30 minutes of his rest periods, Defendants only paid him 20 minutes of "paid break" time. As another example, on August 24, 2021, Plaintiff clocked out for one rest period of 19 minutes, but Defendants only paid him for 10 minutes of "paid break" time. Wage Order 7, § 12 requires that all "rest period time shall be counted as hours worked for which there shall be no deduction from wages." Thus, Defendants failed to comply with Wage Order 7 and in doing so, failed to pay Plaintiff for all of his hours worked, including minimum wages and overtime wages. On information and belief, Defendants have paid other non-exempt employees in the same fashion for their rest periods, resulting in unpaid minimum wages and overtime wages for other non-exempt employees as well.

11. In addition to failing to pay wages for all hours worked, Defendants have failed to pay Plaintiff and other non-exempt employees overtime at one and one-half times their "regular rate" of pay. Specifically, Defendants have failed to incorporate non-discretionary bonuses, shift differentials, and/or other forms of pay not excludable from the regular rate (collectively, such forms of pay are referred to herein as "Incentive Pay") when calculating Plaintiff's and other non-exempt employees' regular rate of pay, which has caused Defendants to under-pay overtime (and/or double-time) wages. For example, in the workweek of April 23-29, 2021, Plaintiff's wage statement reflects that he was paid at a base rate of \$15.00 per hour, and also earned a bonus of \$15.00 and worked 1 hour and 29 minutes of overtime in the same workweek. Plaintiff, however,

1 was paid for his overtime hours at one and one-half times his *base* rate of pay (i.e., at \$22.50/hour),
2 which excluded the value of Plaintiff’s non-discretionary bonus in the calculation of the overtime
3 rate. As another example, during the pay period of October 1-7, 2021, Plaintiff was paid \$16.50
4 per hour for several hours of an “acclimation shift” as well as a base rate of \$15.00 per hour for
5 his regular shift, and also worked some overtime. Plaintiff, however, was paid for the overtime
6 he worked during this period based at 1/5 times his *base* rate of pay (i.e., \$22.50/hour), which
7 excluded the value of Plaintiff’s additional earnings for his “acclimation shift” differential,
8 resulting in Plaintiff being underpaid for overtime hours worked. On information and belief,
9 Defendants have likewise failed to incorporate Incentive Pay in other non-exempt employees’
10 “regular rate” of pay, thereby under-paying employees for overtime (and/or double-time) wages.

11 12. In addition to under-paying Plaintiff and other non-exempt employees for their
12 overtime wages, Defendants’ failure to incorporate Incentive Pay into the regular rate has also
13 caused an under-payment of paid sick time. For example, in the pay period of November 16-22,
14 2021, Plaintiff was paid a base rate of \$15.30 per hour and earned a bonus of \$5.00, but he was
15 paid for 16.0 hours of sick pay time at his *base* hourly rate of \$15.30, which failed to incorporate
16 the value of Incentive Pay into the regular rate. This violates Labor Code § 246(l)(1), which
17 mandates that “Paid sick time for nonexempt employees shall be calculated in the same manner
18 as the regular rate of pay for the workweek in which the employee uses paid sick time.”

19 13. Defendants have also failed to provide Plaintiff and other non-exempt employees
20 with all statutorily mandated meal periods due to Defendants’ meal period policies/practices.
21 Specifically, the workload imposed on Plaintiff and other non-exempt employees made it
22 impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty meal
23 period prior to the end of the fifth hour of work, and/or a second 30-minute meal period on shifts
24 over 10.0 hours. In those instances that Defendants failed to provide Plaintiff and other non-
25 exempt employees with a legally compliant meal period, Defendants failed to pay the meal period
26 premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion
27 of the putative class period, Defendants maintained no payroll code or other mechanism for
28 paying meal period premiums when Defendants failed to provide a legally compliant meal period.

1 14. Defendants have also failed to authorize and permit all statutorily mandated rest
2 periods to Plaintiff and other non-exempt employees due to Defendants' rest period
3 policies/practices. Specifically, Defendants often failed to authorize and permit a second rest
4 period to Plaintiff and other non-exempt employees on shifts over 6.0 hours, and/or a third rest
5 period on shifts over 10.0 hours. Indeed, many of Plaintiff's time records from his employment
6 reflect that Plaintiff did not take a second and/or third rest period on such shifts. Moreover, and
7 as described *supra*, Defendants failed to authorize and permit paid rest periods since they failed
8 to pay Plaintiff and other non-exempt employees for all rest period time as required under
9 California law. In those instances that Defendants failed to authorize and permit Plaintiff and
10 other non-exempt employees with a legally compliant rest period, Defendants failed to pay the
11 rest period premiums required by Labor Code § 226.7. Upon information and belief, during at
12 least a portion of the putative class period, Defendants maintained no payroll code or other
13 mechanism for paying rest period premiums when Defendants failed to provide authorize and
14 permit a legally compliant rest period.

15 15. As a result of Defendants' failure to pay all overtime wages and minimum wages,
16 as well as Defendants' failure to pay meal and rest period premium wages, Defendants failed to
17 timely pay all wages to Plaintiff and other formerly employed non-exempt employees at the
18 separation of their employment.

19 16. As a further result of Defendants' failure to pay all minimum wages and overtime
20 wages, as well as Defendants' failure to pay meal and rest period premium wages, Defendants
21 maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff.

22 17. The wage statements issued to Plaintiff and other employees were also facially
23 deficient. Specifically, the wage statements failed to include the address of the legal entity that is
24 the employer, in violation of Labor Code § 226(a)(8), in that the wage statements simply listed
25 the address of Defendants as "1401 178th St" and failed to include the city, state, and ZIP code of
26 the address. As a result, the wage statements issued by Defendants were facially deficient in
27 violation of Labor Code § 226(a)(8).

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18. In addition, Defendants have failed to pay Plaintiff and other non-exempt employees in a timely manner, in violation of Labor Code § 204. Specifically, Section 204 requires that all wages earned between the 1st and 15th days of each month be paid between the 16th and 26th of that month, and requires all wages earned between the 16th day of the month and last day of the month to be paid between the 1st and 10th days of the following month. That section further provides that “[t]he 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.” (Labor Code § 204(d)). Defendants, however, consistently paid wages approximately 8 days after the close of the pay period. For example, in the pay period of October 15-21, 2021, Defendants paid Plaintiff on October 29, 2021, 8 days after the close of the pay period. This resulted in wages that were earned on October 15 to be paid after October 26. As a result, Defendants have failed to pay Plaintiff and other non-exempt employees timely in accordance with Labor Code § 204.

CLASS ACTION ALLEGATIONS

19. Class Definitions: Plaintiff bring this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Minimum Wage Class consists of all of the Defendants’ current and former non-exempt employees who were subject to Defendants’ timekeeping and payroll practices, at any time from four years prior to the filing of this action through the present.

b. The Overtime Class consists of all of the Defendants’ current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and (i) were subject to Defendants’ timekeeping and payroll practices; and/or (ii) earned Incentive Pay and worked overtime in the same pay period, at any time from four years immediately prior to the filing of this action through the present.

c. The Meal Period Class consists of all of the Defendants’ current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours, at any time from four years immediately prior to the filing of this action through the present.

1 d. The Rest Period Class consists of all of the Defendants' current and former non-
2 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
3 time from four years immediately preceding the filing of this action through the present.

4 e. The Wage Statement Class consists of (i) all members of the Minimum Wage
5 Class, Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage
6 statement during the one year immediately preceding the filing of this lawsuit through the
7 present; and (ii) all of the Defendants' current and former employees (both exempt and
8 non-exempt) in California who were issued a wage statement that did not contain
9 Defendants' legal address (including city, state, and ZIP code) on the wage statement at
10 any time from one year immediately preceding the filing of this action through the present.

11 f. The Waiting Time Class consists of all members of the Minimum Wage Class,
12 Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed
13 by Defendants and who last worked for Defendants at any time from three years
14 immediately preceding the filing of this action through the present.

15 20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
16 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
17 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
18 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
19 Defendants' employment records.

20 21. **Common Questions of Law and Fact Predominate/Well Defined Community**
21 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
22 situated employees, which predominate over questions affecting only individual members
23 including, without limitation:

- 24 i. Whether Defendants' timekeeping and payroll practices violate the
25 applicable Labor Code provisions including, but not limited to, Sections
26 510 and 1194 by requiring overtime work and not paying the Overtime
27 Class for said work according to California's overtime laws;

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- ii. Whether Defendants paid at least the minimum wage for all hours worked to members of the Minimum Wage Class;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, overtime, wage statement, meal period, rest period, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

23. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned minimum wages and overtime wages, was subject to Defendants' uniform meal and rest period policies/practices, was furnished with inaccurate wage statements, and was deprived of all final wages upon his separation of employment from Defendants.

24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of

1 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
2 actions in state and federal courts in the past and are committed to vigorously prosecuting this
3 action on behalf of the members of the Classes.

4 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and standards in
6 California. These laws and labor standards protect the average working employee from
7 exploitation by employers who have the responsibility to follow the laws and who may seek to
8 take advantage of superior economic and bargaining power in setting onerous terms and
9 conditions of employment. The nature of this action and the format of laws available to Plaintiff
10 and members of the Classes make the class action format a particularly efficient and appropriate
11 procedure to redress the violations alleged herein. If each employee were required to file an
12 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
13 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
14 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
15 an individual remedy would discourage the assertion of lawful claims by employees who would
16 be disinclined to file an action against their former and/or current employer for real and justifiable
17 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
18 prosecution of separate actions by individual class members would create a substantial risk of
19 inconsistent or varying verdicts or adjudications with respect to the individual class members
20 against Defendants herein; and which would establish potentially incompatible standards of
21 conduct for Defendants. Further, the claims of the individual members of the Classes are not
22 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
23 costs and expenses attending thereto. As such, the Classes identified in Paragraph 19 are
24 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **MINIMUM WAGE VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 27. Wage Order 7, § 4 and Labor Code §§ 1197 and 1182.12 establish employees'
6 right to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§
7 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage
8 as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
9 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

10 28. At all relevant times, Defendants failed to conform their pay practices to the law
11 by failing to pay Plaintiff and the Minimum Wage Class for all hours worked including, but not
12 limited to, all hours they were subject to Defendants' control and/or suffered or permitted to work,
13 and/or for time spent during paid rest periods, under the Labor Code and Wage Order 7.

14 29. California Labor Code § 1198 makes unlawful the employment of an employee
15 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
16 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
17 those employees the balance of the unpaid wages as well as liquidated damages in an amount
18 equal to the wages due and interest thereon.

19 30. As a direct and proximate result of Defendants' unlawful conduct as alleged
20 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
21 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
22 entitled to recover economic and statutory damages and penalties and other appropriate relief as
23 a result of Defendants' violations of the California Labor Code and Wage Order 7.

24 31. Defendants' practice and uniform administration of corporate policy regarding
25 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
26 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
27 damages, interest thereon, statutory penalties, and attorneys' fees and costs of suit, per Labor
28 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

34. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

35. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime wages, interest, statutory penalties, and attorneys’ fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including

1 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
2 the mandates of the California Labor Code and Wage Order 7, for the reasons set forth in this
3 Complaint.

4 38. As a result, Defendants owe premium compensation for meal period violations,
5 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 7, Labor
6 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

7 **FOURTH CAUSE OF ACTION**

8 **REST PERIOD VIOLATIONS**

9 **(AGAINST ALL DEFENDANTS)**

10 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 40. Labor Code §§ 226.7 and 516, and Wage Order 7, § 12 establish the right of
12 employees to be authorized and permitted a paid rest period of at least ten (10) minutes for each
13 four (4) hour period worked, or major fraction thereof.

14 41. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest
15 Period Class members to take their legally entitled rest periods. Defendants also failed to
16 compensate Plaintiff and Rest Period Class members with a rest period premium for each rest
17 period to which they were entitled.

18 42. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
19 Period Class members in a civil action for the unpaid amount of rest period premiums owing,
20 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
21 Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, §
22 1 of the California Constitution.

23 **FIFTH CAUSE OF ACTION**

24 **WAGE STATEMENT VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

26 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff

and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, all meal and rest period premium wages earned, total hours worked, and the address of the legal entity that is the employer, in violation of Labor Code § 226.

45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their minimum and overtime wages and meal and rest period premium wages, and deprived them of the information required under Labor Code § 226(a) and of information necessary to identify the discrepancies in Defendants' reported data.

46. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid minimum wages, unpaid overtime wages, and unpaid meal and rest period premium wages.

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50. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

51. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members their earned wages upon separation results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and Waiting Time Class members are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

53. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages due, failing to provide meal periods or pay meal period premium wages, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, and failing to pay all earned wages at separation of employment.

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

55. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

1 56. The acts complained of herein occurred within the four years immediately
2 preceding the filing of this action. Plaintiff was compelled to retain the services of counsel to file
3 this court action to protect his interests and those of the Classes, to obtain restitution and injunctive
4 relief on behalf of Defendants' current non-exempt employees, and to enforce important rights
5 affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees
6 and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

7 **EIGHTH CAUSE OF ACTION**
8 **PRIVATE ATTORNEYS GENERAL ACT**
9 **(AGAINST ALL DEFENDANTS)**

10 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 58. Defendants have committed several Labor Code violations against Plaintiff and
12 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
13 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings
14 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
15 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
16 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
17 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
18 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
19 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
20 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
21 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
22 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
23 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay
24 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
25 employee per pay period for those violations of the Labor Code for which no civil penalty is
26 specifically provided, based on the following Labor Code violations:

- 27 a. Failing to furnish Plaintiff and other aggrieved employees with accurate and
28 complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

- b. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- d. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- f. Failing to compensate Plaintiff and other aggrieved employees for paid sick time at their respective regular rates of pay, in violation of Labor Code § 246;
- g. Failing to timely pay Plaintiff and other aggrieved employees their wages during employment, in violation of Labor Code § 204; and
- h. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203.

59. On or about November 9, 2022, Plaintiff notified Defendant CIS International Distributors, Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 58 (a)-(h) above. On December 14, 2022, counsel for Defendant CIS International Distributors, Inc. submitted a purported cure letter, asserting that it had cured one or more of the violations asserted in Plaintiff's PAGA notice letter. On January 3, 2023, Plaintiff's counsel submitted a cure dispute

notice, in which Plaintiff disputed that any of the violations had been cured, or that the vast majority of them could even be cured. On January 13, 2023, the LWDA sent a letter via certified mail to the parties, advising that it had reviewed the initial PAGA notice letter, the cure letter, and the cure dispute letter, and concluded that “the alleged cure was insufficient.” Specifically, the LWDA concluded that “The submissions here do not show that Respondent took sufficient curative action with regard to the alleged wage statement violation. The other allegations are not curable. Therefore, LWDA finds that there has not been a cure.” Accordingly, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for unpaid minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;

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1 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
2 226, *et seq.*;

3 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203;

5 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to violate Business & Professions Code § 17200, *et seq.*;

8 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
9 employees, and the State of California according to proof pursuant to Labor Code § 2699,
10 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
11 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
12 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
13 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
14 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
15 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
16 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
17 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
18 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
19 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
20 Labor Code § 2699(f);

21 12. Prejudgment interest on all due and unpaid wages and other damages pursuant to
22 California Labor Code §§ 218.6, 1194(a), 1194.2(a); Civil Code § 3287; and Art. XV, § 1 of the
23 California Constitution;

24 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
25 226(e), 1194 *et seq.*, 2699(g), and Code of Civil Procedure § 1021.5, and all other relevant
26 statutes; and

27 ///

28 ///

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

2
3 Date: January 18, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

4
5 By: _____



Tuvia Korobkin
Attorney for Plaintiff

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

8
9 Dated: January 18, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

10
11 By: _____



Tuvia Korobkin
Attorney for Plaintiff