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JORGE TORRES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

JORGE TORRES, an individual,

Plaintiff,

vs.

PB WHEELS & TIRES, INC., a California
corporation; ISRAEL SILVA, an
individual; OSWALDO CURIEL, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CVRI 2503264

COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION
AS EXEMPT (Wage Order No. 9);**
- 2. FAILURE TO PAY PREMIUM
OVERTIME WAGES (Cal. *Labor
Code* §§ 510, 511, 1194, 1198; IWC
Wage Order No. 9);**
- 3. FAILURE TO PAY MINIMUM
WAGES (Cal. *Labor Code* §§1194,
1194.2, 1997, 1197.1, 1198; IWC
Wage Order No. 9)**
- 4. FAILURE TO PROVIDE TIMELY
OFF DUTY MEAL PERIODS (Cal.
Labor Code §§ 226.7, 512; IWC Wage
Order No. 9)**
- 5. FAILURE TO PROVIDE REST
PERIODS (Cal. *Labor Code* § 226.7;
IWC Wage Order No. 9);**
- 6. FAILURE TO MAINTAIN AND
ISSUE ACCURATE WAGE
STATEMENTS (Cal. *Labor Code*
§226; IWC Wage Order No. 9);**
- 7. FAILURE TO PAY WAGES DUE
UPON TERMINATION (Cal. *Labor
Code* §§201-203);**
- 8. FAILURE TO REIMBURSE
BUSINESS EXPENSES (Cal. *Labor
Code* §2802);**
- 9. FAILURE TO ALLOW
INSPECTION OF EMPLOYMENT**

- RECORDS (Cal. Labor Code §1198.5);**
- 10. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.);**
- 11. MONEY HAD AND RECEIVED;**
- 12. CONVERSION – IMPROPER RECEIPT OF GRANTUITIES;**
- 13. ACCOUNTING;**
- 14. RETALIATION IN VIOLATION OF CAL. LABOR CODE §98.6;**
- 15. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.**

DEMAND FOR A JURY TRIAL

JORGE TORRES (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Complaint under *Code of Civil Procedure* §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in Riverside County and because Defendant PB Wheels & Tires, Inc. owned and operated their business in Riverside County.

II. PARTIES

3. At all times relevant hereto, Plaintiff Jorge Torres (hereinafter “Plaintiff”) was an individual over age 18 and a resident of Riverside, California.

4. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendant PB Wheels & Tires, Inc. (“PB” or “Defendant”), has been, and is a California corporation, with a principal place of business at 139548 Old Hwy 215 Frontage Road, Moreno Valley, California 92553. Plaintiff is informed and believes and thereon alleges that at all times material hereto PB has been authorized to do business and has been doing business in the State of California.

1 5. Plaintiff is informed and believes and thereon alleges that Defendant Israel Silva
2 ("Israel") is an individual, who at all times relevant herein, was a resident of Riverside County.
3 Israel is the owner/manager of PB.

4 6. Plaintiff is informed and believes and thereon alleges that Defendant Oswaldo
5 Curiel ("Oswaldo") (collectively with PB and Israel "Defendants") is an individual, who at all
6 times relevant herein, was a resident of Riverside County. Oswaldo is a manager at PB.

7 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
8 herein, Defendant and some of DOES 1 through 100 were the agents, employees, and/or
9 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
10 herein alleged, were acting within the course and scope of such agency or employment, and
11 with the approval and ratification of each of the other Defendants.

12 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
13 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
14 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
15 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
16 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
17 individual person who owned, controlled, or managed the business for which Plaintiff worked
18 and/or who directly or indirectly exercised operational control over the wage policies of
19 Plaintiff. These DOE Defendants held ownership, officer, director and/or executive positions
20 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
21 included decision-making responsibility for, and establishment of, wage and hour violations for
22 Defendants which have damaged Plaintiff. Therefore, Does 1 through 100, in addition to the
23 remaining Defendants, are "employers" as a matter of law and are liable on the causes of action
24 alleged herein.

25 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
26 through 100 are, and at all times relevant hereto were, persons, corporations or other business
27 entities organized and existing under and by virtue of the laws of the State of California, and
28 are/were qualified to transact and conduct business in the State of California, and did transact

1 and conduct business in the State of California, and are thus subject to the jurisdiction of the
2 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
3 employ persons, conduct business and engage in wage and hour violations in the County of
4 Riverside.

5 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
6 fictitiously named Defendants aided and assisted the named Defendants in committing the
7 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
8 Defendant.

9 **III. PAGA NOTICE**

10 11. Pursuant to the California Labor Code, on or about June 16, 2025, Plaintiff filed
11 a notice with Labor and Workforce Development Agency (LWDA) of his intent to pursue
12 claims against Defendant under the Private Attorney General Act (PAGA). As such, Plaintiff
13 further reserves the right to amend this Complaint once he completes and complies with the
14 provisions under the law.

15 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 **Employment Information**

17 12. Plaintiff was an employee of PB since on or about June 15, 2022. Plaintiff
18 worked as a General Worker in tire repair for PB. Plaintiff's job entailed assisting customers,
19 repairing tires and performing general tire-related work. He typically worked 6 days a week
20 and 60 or more hours per week. Plaintiff was paid a salary of \$820 per week, no matter how
21 many hours he worked. He was employed at PB until May 21, 2025, when Plaintiff was
22 wrongfully terminated.

23 **Wage and Hour Violations**

24 13. The employment by PB of Plaintiff is governed by Industrial Welfare
25 Commission Wage Order No. 9, which covers those persons in the transportation industry.

26 14. Plaintiff was willfully misclassified as exempt in violation of Wage Order No. 9.

27 15. Plaintiff was not paid overtime.

28 16. Plaintiff was not paid minimum wages.

1 17. Plaintiff was not afforded any rest breaks while he worked at PB.

2 18. Plaintiff's meal breaks were afforded late, after the fifth hour of his shift and/or
3 interrupted.

4 19. As a result of Defendant's failure to pay Plaintiff overtime, minimum wages,
5 and afford compliant meal/rest breaks, the wage statements issued to him did not comply with
6 Labor Code §226 and California Industrial Welfare Commission ("IWC") Wage Order No. 9 in
7 that they did not accurately reflect all wages earned and due and owing.

8 20. As a further result of Defendant's failure to pay overtime, minimum wages,
9 afford meal/rest breaks to Plaintiff, when Plaintiff left their employ, he was not timely paid all
10 wages due him, as required by Labor Code §§ 201, 202 and Wage Order No. 9.

11 21. Plaintiff was not reimbursed for his necessary business expenses.

12 22. Defendant failed to provide Plaintiff with his requested employment records.

13 23. Plaintiff was retaliated against and wrongfully terminated for complaining about
14 wage and hour violations.

15 24. Defendant converted Plaintiff's gratuities.

16 **FIRST CAUSE OF ACTION**

17 **WILLFUL MISCLASSIFICATION AS EXEMPT**

18 **(Wage Order No. 9 By Plaintiff Against Defendant and Does 1-100)**

19 25. Plaintiff realleges and incorporates by reference all of the allegations set forth in
20 this Complaint.

21 26. Defendant misclassified Plaintiff as an exempt employee rather than non-exempt
22 in violation of IWC Wage Order No. 9, for its own financial benefit.

23 27. The California Industrial Welfare Commission Wage Order No. 9 identifies
24 three exemptions to the provisions of the wage order: executive exemption, administrative
25 exemption, and professional exemption. None of the exemptions apply to Plaintiff.

26 28. On information and belief Defendant decided to wrongfully treat Plaintiff as an
27 exempt employee.

28

1 29. Plaintiff did not meet the requirements of being “salary exempt” as set forth by
2 California Labor Code § 515(a). Plaintiff was not allowed to make independent decisions.
3 Plaintiff did not manage any employees of Defendant. He did not have authority to hire or fire
4 employees. Further, Plaintiff did not have independent judgment or discretion in his job
5 position. Plaintiff performed more hourly work than management work.

6 30. Defendant thus improperly classified Plaintiff as exempt from the wage and
7 hour requirements set forth in the Labor Code and IWC Wage Order No. 9, because he did not
8 qualify as exempt.

9 31. Because of this misclassification, Plaintiff suffered damages as a result of
10 Defendant’s violation of IWC Wage Order No. 9, in an amount according to proof.

11 32. Based on Defendant’s conduct as alleged herein, Defendant is liable for
12 damages and statutory penalties pursuant to Labor Code §226, Labor Code §218.5 and
13 penalties pursuant to Labor Code §§203 and 206.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME WAGES**

16 **(Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order No. 9 By Plaintiff against**
17 **Defendant and Does 1-100)**

18 33. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 this Complaint.

20 34. During Plaintiff’s entire employment with Defendant, pursuant to Cal. Lab.
21 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 9, Defendant was required to
22 compensate Plaintiff with premium pay for all overtime work performed, for hours worked in
23 excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
24 hours on the seventh (7th) consecutive day of any work week.

25 35. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
26 who had not been paid overtime compensation could recover the unpaid balance of the full
27 amount of overtime wages due, including interest thereon, together with reasonable attorneys’
28 fees and costs of suit.

1 36. California Labor Code section 1198 provides,

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

7 37. Pursuant to IWC Wage Order No. 9-2001, § 3, "Employment beyond eight (8)
8 hours in any workday is permissible provided the employee is compensated for such overtime
9 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
10 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
11 workday..."

12 38. California Labor Code section 558 provides in pertinent part:

13 (a) Any employer or other person acting on behalf of an employer who
14 violates, or causes to be violated, a section of this chapter or any
15 provision regulating hours and days of work in any order of the
16 Industrial Welfare Commission shall be subject to a civil penalty as
 follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in
 addition to an amount sufficient to recover underpaid wages.

19 (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was
21 underpaid in addition to an amount sufficient to recover underpaid
 wages.

22 (3) Wages recovered pursuant to this section shall be paid to the affected
23 employee...

24 (c) The civil penalties provided for in this section are in addition to any
25 other civil or criminal penalty provided by law.

26 39. Plaintiff worked 10 or more hours per day, 6 days per week. Throughout
27 Plaintiff's employment, Defendant failed and refused to properly pay overtime time
28

1 compensation to Plaintiff. Plaintiff was paid a weekly salary of \$820.00 no matter how many
2 hours he worked. He typically worked 20 hours of overtime per week.

3 40. Plaintiff was not paid overtime that was due to him.

4 41. The foregoing overtime compensation is owed and unpaid. As a direct and
5 proximate result of Defendant's failure and refusal to pay overtime time, Plaintiff suffered
6 damages in the amount of at least \$110,880.00, according to proof at trial.

7 42. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime wages
8 against employers and those individuals acting in their behalf. Plaintiff requests that this Court
9 assess said penalty against Defendant in an amount to be proven at trial.

10 43. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
11 counsel in order to enforce Plaintiff's rights to overtime pay, is entitled to recover his attorneys'
12 fees, costs and interest.

13 **THIRD CAUSE OF ACTION**

14 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
15 **119, IWC Wage Order No. 9 – By Plaintiff against Defendant and Does 1 through 100)**

16 44. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 45. *Labor Code* § 1197 states the California requirement that employees must be
19 paid at least the minimum wage fixed by the Commission, and any payment of less than the
20 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
21 less than the legal minimum wage... to recover in a civil action the unpaid balance of the full
22 amount of this minimum wage." IWC Wage Order No. 9 also obligates employers to pay each
23 employee minimum wages for all hours worked. These minimum wage standards apply to each
24 hour employees worked for which they were not paid. Therefore, an employer's failure to pay
25 for any particular hour of time worked by an employee is unlawful, even if averaging an
26 employee's total pay over all hours worked, paid or not, results in an average hourly wage
27 above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

1 46. Here, Plaintiff was not paid minimum wages due to Defendant's failure to afford
2 Plaintiff compliant meal/rest breaks. Further, Defendant paid him a salary below minimum
3 wage given the number of hours he worked.

4 47. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
5 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
6 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

7 48. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
8 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
9 *Code* § 1194. Where an employee, such as Plaintiffs are not paid for all hours worked under
10 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
11 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
12 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
13 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
14 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
15 (N.D. Cal. 2016).

16 49. Plaintiff suffered and continued to suffer losses related to the use and
17 enjoyment of compensation due and owing to him as a direct result of Defendant's unlawful
18 acts and Labor Code violations in the amount of at least \$110,880.00, according to proof at
19 trial.

20 50. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
21 wages against employers and those individuals acting on their behalf. Plaintiff requests that
22 this Court assess said penalty against Defendant in an amount to be proven at trial.

23 51. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558, 1194 and
24 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendant
25 owes him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
26 according to proof.

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1 **FOURTH CAUSE OF ACTION**

2 **(For Failure to Provide Meal Breaks in violation of Cal. Labor Code §226.7– By**
3 **Plaintiff Against Defendant and Does 1 through 100)**

4 52. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 53. California Labor Code §226.7(a) prohibits an employer from requiring an
7 employee to work during any meal period mandated by an applicable Industrial Wage Order.
8 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
9 employee to work during a meal or rest break or recovery period mandated pursuant to an
10 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
11 Commission..."

12 54. California Labor Code §1198 makes unlawful the employment of an employee
13 under conditions the IWC prohibits.

14 55. Wage Order No. 9 provides, in relevant part: "No employer shall employ any
15 person for a work period of more than five (5) hours without a meal period of not less than 30-
16 minutes, except that when a work period of not more than six (6) hours will complete the day's
17 work the meal period may be waived by mutual consent of the employer and the employee."

18 56. Wage Order No. 9 further provides, in relevant part: "Unless the employee is
19 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
20 duty' meal period and counted as time worked."

21 57. Section 512(a) of the California Labor Code provides, in relevant part, that:
22 An employer may not employ an employee for a work period of more than five
23 hours per day without providing the employee with a meal period of not less
24 than 30-minutes, except that if the total work period per day of the employee is
25 no more than six hours, the meal period may be waived by mutual consent of
26 both the employer and employee. An employer may not employ an employee for
27 a work period of more than 10 hours per day without providing the employee
28 with a second meal period of not less than 30-minutes, except that if the total

1 hours worked is no more than 12 hours, the second meal period may be waived
2 by mutual consent of the employer and the employee only if the first meal
3 period was not waived.

4 58. The Labor Code and Wage Order provisions cited above require California
5 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
6 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
7 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
8 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
9 the fifth hour of their shifts.

10 59. Plaintiff's meal breaks were afforded late after the fifth hour of his shift.
11 Further, at times, Plaintiff's meal breaks were interrupted.

12 60. Defendant further violated IWC Wage Order No. 9 and Labor Code
13 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
14 of pay for each work day that the meal period was not provided, in an amount according to
15 proof. This amount remains owed and unpaid.

16 61. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
17 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
18 § 226.7(b).

19 62. As a direct and proximate result of PB's unlawful conduct as alleged herein,
20 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost
21 interest, in the amount of at least \$110,880.00, to be established at trial, and is entitled to
22 recover economic and statutory damages, attorneys' fees and penalties and other appropriate
23 relief due to PB's violations of the California Labor Code and IWC Wage Order No. 9.

24 **FIFTH CAUSE OF ACTION**

25 **(For Failure to Provide Rest Breaks in violation of Cal. Labor Code §226.7– By**
26 **Plaintiff Against Defendant and Does 1 through 100)**

27 63. Plaintiff realleges and incorporates by reference all of the allegations set forth in
28 this Complaint.

64. Labor Code § 226.7 and Wage Order No. 9 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

65. Labor Code § 226.7 and Wage Order No. 9 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

66. Defendant has intentionally and improperly not afforded any rest periods to Plaintiff in violation of Labor Code § 226.7 and Wage Order No. 9.

67. At all times relevant hereto, Plaintiff has worked 10 or more hours daily.

68. At all times relevant hereto, Defendant failed to provide rest periods as required by Labor Code § 226.7 and Wage Order No. 9.

69. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

SIXTH CAUSE OF ACTION

**(Failure to Maintain and Issue Accurate Wage Statements in Violation of Labor Code
§226 - By Plaintiff Against Defendant and Does 1 through 100)**

70. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

71. At all times relevant hereto, Defendant failed to issue payroll statements to Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did not properly and accurately itemize the number of hours Plaintiff worked at the effective regular rates of pay and the effective overtime rates of pay, minimum wage rates and premium pay for meal/rest breaks not compliant.

72. Defendant knowingly and intentionally failed to comply with *Labor Code* §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs

1 expended calculating the actual hours worked and the amount of employment taxes which were
2 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
3 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
4 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
5 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

6 73. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
7 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

8 **SEVENTH CAUSE OF ACTION**
9 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

10 **(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)**

11 74. Plaintiff realleges and incorporates by reference all of the allegations set forth in
12 this Complaint.

13 75. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
14 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns or
15 is terminated from employment, unpaid wages are due and payable within 72 hours of
16 resignation or termination.

17 76. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
18 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
19 paid, not to exceed thirty days.

20 77. Plaintiff was discharged from Defendant's employ and Defendant willfully
21 failed to pay overtime, minimum wages, afford timely meal breaks, afford rest breaks, did not
22 pay him premium pay for meal/rest breaks not afforded and tips not paid.

23 78. Defendant terminated Plaintiff on May 21, 2025, yet failed to pay him wages
24 due to him.

25 79. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
26 he was not timely paid, not to exceed 30 days' wages.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(Cal. Labor Code §2802 By Plaintiff Against Defendant and Does 1 through 100)**

4 80. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 81. Labor Code §2802 requires employers to indemnify employees for all necessary
7 expenditures incurred by employees in the discharge of their duties.

8 82. At all times relevant herein, Defendant was aware that Plaintiff was using his
9 personal vehicle, cell phone and buying tools, but failed to indemnify Plaintiff for all his
10 business-related expenses, including wear and tear expenses, in accordance with Labor Code
11 §2802.

12 83. As a result of Defendant's conduct, Plaintiff suffered damages in an amount,
13 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
14 incurred in the discharge of his duties.

15 84. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
16 his unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

17 **NINTH CAUSE OF ACTION**

18 **(For Failure to Allow Inspection of Employment Records in Violation of Cal. Labor Code**
19 **§1198.5 By Plaintiff Against Defendant and Does 1 through 100)**

20 85. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 86. California Labor Code Section 1198.5 provides:

23 (a) Every current and former employee, or his or her representative, has the right
24 to inspect and receive a copy of the personnel records that the employer
25 maintains relating to the employee's performance or to any grievance concerning
26 the employee.

27 (b) The employer shall make the contents of those personnel records available
28 for inspection to the current or former employee, or his or her representative, at

1 reasonable intervals and at reasonable times, but not later than 30 calendar days
2 from the date the employer receives a written request, unless the current or
3 former employee, or his or her representative, and the employer agree in writing
4 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
5 date does not exceed 35 calendar days from the employer's receipt of the written
6 request to inspect the records. Upon a written request from a current or former
7 employee, or his or her representative, the employer shall also provide a copy of
8 the personnel records,... later than 30 calendar days from the date the employer
9 receives the request...

10 (k) If an employer fails to permit a current or former employee, or his or her
11 representative, to inspect or copy personnel records within the times specified I
12 this section... the current or former employee may recover a penalty of seven
13 hundred fifty dollars (\$750) from the employer.

14 (1) A current or former employee may also bring an action for injunctive relief
15 to obtain compliance with this section, and may recover costs and reasonable
16 attorney's fees in such an action.

17 87. Additionally, pursuant to Wage Order No. 9, at section 7 re: Records, employers
18 are required to keep accurate payroll records on each employee, and such records must be made
19 readily available for inspection by the employee upon reasonable request. The employer must
20 also maintain accurate production records.

21 88. On or about June 16, 2025, Plaintiff's counsel issued a written request to PB for
22 copies of his personnel records.

23 89. Under California Labor Code Sections 226, 432 and 1198.5, such records were
24 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
25 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
26 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
27 records.

90. As a direct result and consequence of Defendant's failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendant's violation of §1198.5.

TENTH CAUSE OF ACTION

(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code §17200 et. seq. – By Plaintiff Against Defendant and Does 1 through 100)

91. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

92. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair competition, which shall mean and include any "unlawful and unfair business practices."

93. Defendant's conduct as alleged herein has been and continues to be unfair, unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this suit for restitution.

94. Paying overtime, minimum wages, affording employees' compliant meal/rest breaks and paying premium pay for failure to afford meal/rest breaks and reimbursing business expenses, are fundamental public policies of the State of California. It is also the public policy of this State to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect those employers who comply with the law from losing competitive advantage to other employers who fail to comply with labor standards and requirements.

95. Defendant failed to pay overtime, minimum wages, afford compliant meal/rest breaks, and reimburse expenses to Plaintiff. Further, Defendant failed to provide Plaintiff with his personnel records.

96. Through the conduct alleged herein, Defendant acted contrary to these public policies and has thus engaged in unlawful and/or unfair business practices in violation of Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits, and privileges guaranteed to employees under California law.

97. Defendant regularly and routinely violated the following statutes and regulations with respect to Plaintiff:

- (a) Willful misclassification as exempt (Wage Order No. 9);
- (b) *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No. 9 as amended (failure to pay overtime);
- (c) *Labor Code* § 1197 and Wage Order No. 9 (failure to pay minimum wages);
- (d) Labor Code §226 (failure to afford meal/rest breaks);
- (e) *Labor Code* § 226 (failure to provide accurate wage statements to employees at the time of payment of wages);
- (f) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
- (g) *Labor Code* § 2802 (failure to reimburse business expenses); and
- (h) *Labor Code* §1198.5 (failure to allow inspection of employment records).

98. By engaging in these business practices, which are unfair business practices within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, Defendant harmed Plaintiff and gained an unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is entitled to obtain restitution of these funds.

ELEVENTH CAUSE OF ACTION

(Money Had and Received - by Plaintiff against all Defendants and Does 1 through 100)

99. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

1 100. Defendants improperly received money from tips that were intended to be used
2 for the benefit of Plaintiff. Plaintiff earned the money from tips by serving customers at PB.
3 When customers paid the tip by credit card, Plaintiff would not be given his earned tips. PB
4 would keep the tips. Plaintiff only received tips that were paid by customers in cash.

5 101. California Labor Code section 558 provides in pertinent part:

6 (a) Any employer or other person acting on behalf of an employer who
7 violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the
9 Industrial Welfare Commission shall be subject to a civil penalty as
10 follows:

11 (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the
13 employee was underpaid in addition to an amount
14 sufficient to recover underpaid wages.

15 (2) For each subsequent violation, one hundred dollars (\$100)
16 for each underpaid employee for each pay period for which
17 the employee was underpaid in addition to an amount
18 sufficient to recover underpaid wages.

19 (3) Wages recovered pursuant to this section shall be paid to
20 the affected employee...

21 (c) The civil penalties provided for in this section are in addition to any
22 other civil or criminal penalty provided by law.

23 102. Pursuant to Cal. Labor Code §558.1:

24 (a) Any employer or other person acting on behalf of an employer, who vio-
25 lates, or causes to be violated, any provision regulating...hours and days of work
26 in any order of the Industrial Welfare Commission, or violates, or causes to be
27 violated Sections 203, 226, 226.7...may be held liable as the employer for such
28 violation.

 (b) For purposes of this section, the term “other person acting on behalf of an
employer” is limited to a natural person who is an owner, director, officer, or
managing agent of the employer, and the term “managing agent” has the same
meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 (c) Nothing in this section shall be construed to limit the definition of em-
2 ployer under existing law.

3 103. Israel is the owner of PB and is therefore liable to Plaintiff as an employer. De-
4 fendants caused the laws relating to money had and received to be violated.

5 104. Plaintiff complained his manager, Oswaldo, and to the owner/manager of PB,
6 Israel, but nothing was done to rectify the situation.

7 105. The money from the tips was not used for Plaintiff's benefit. The money from
8 the tips has been wrongfully retained by Defendants.

9 106. As a direct and proximate cause of Defendants' conduct, Plaintiff is entitled to
10 return of the money wrongfully retained by Defendants.

11 107. Defendants will be unjustly enriched if they are allowed to retain such funds
12 and, therefore, a constructive trust should be imposed on all monies wrongfully obtained by
13 Defendants and the money should be ordered returned to Plaintiff.

14 **TWELFTH CAUSE OF ACTION**

15 **Conversion – Improper Receipt of Gratuities**

16 **(Cal. Labor Code § 351 by Plaintiff against all Defendants and Does 1 through 100)**

17 108. Plaintiff realleges and incorporates by reference all of the allegations set forth in
18 this Complaint.

19 109. Labor Code section 351 states, "No employer or agent shall collect, take, or
20 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron,
21 or deduct any amount from wages due an employee on account of a gratuity, or require an
22 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the
23 wages due the employee from the employer. Every gratuity is hereby declared to be the sole
24 property of the employee or employees to whom it was paid, given, or left for."

25 110. Pursuant to Cal. Labor Code §558.1:

26 (a) Any employer or other person acting on behalf of an employer, who vio-
27 lates, or causes to be violated, any provision regulating...hours and days of work
28 in any order of the Industrial Welfare Commission, or violates, or causes to be

1 violated Sections 203, 226, 226.7...may be held liable as the employer for such
2 violation.

3 (b) For purposes of this section, the term “other person acting on behalf of an
4 employer” is limited to a natural person who is an owner, director, officer, or
5 managing agent of the employer, and the term “managing agent” has the same
6 meaning as in subdivision (b) of Section 3294 of the Civil Code.

7 (c) Nothing in this section shall be construed to limit the definition of em-
8 ployer under existing law.

9 111. Israel is the owner of PB and is therefore liable to Plaintiff as an employer. De-
10 fendants caused the laws relating to conversion to be violated.

11 112. Upon information and belief, Defendants failed to properly account for and
12 distribute tips paid to Plaintiff when customers paid the tips by credit card.

13 113. As such, Defendants’ tip collecting was in direct violation of Labor Code
14 section 351.

15 114. Therefore, Plaintiff seeks all remedies available for violations of Labor Code
16 section 351.

17 **THIRTEENTH CAUSE OF ACTION**

18 **(Accounting by Plaintiff against Defendant PB and Does 1 through 100)**

19 115. Plaintiff realleges and incorporates by reference all of the allegations set forth in
20 this Complaint.

21 116. Plaintiff is unsure of the exact amount of the tip monies held by Defendant PB.

22 117. Defendant PB is uniquely in possession and control of the information required
23 to determine the nature and identity of the amount of tip monies of which they are in
24 possession.

25 118. As a result, the total amounts of money that have been improperly diverted to
26 Defendant PB, as alleged above, are unknown to Plaintiff and cannot be ascertained without an
27 accounting.

28

1 119. Plaintiff is therefore entitled to a complete and full accounting from Defendant
2 PB, with respect to all of the tip money in possession of Defendant PB.

3 **FOURTEENTH CAUSE OF ACTION**

4 **(Retaliation in Violation of Cal. Lab. §98.6– By Plaintiff Against Defendant PB**
5 **and Does 1 through 100)**

6 120. Plaintiff realleges and incorporates by reference all of the allegations set forth in
7 this Complaint.

8 121. This cause of action is based upon California Labor Code 98.6 which provides
9 that no person shall discharge an employee or in any manner discriminate against any employee
10 or applicant for employment for a bona fide complaint or claim as covered by the California
11 Labor Code, including Labor Code § 96(a) through (k) and claims for non-payment of wages.

12 122. This cause of action is based upon the fundamental public policy of the State of
13 California involving the prompt payment of wages due to employees and the wage and hour
14 laws regarding providing employees with their statutory right to meal and rest periods,
15 overtime compensation, tip monies and to individuals that are retaliated against or discharged
16 for reporting wage violations relating to tips to the employer. Labor Code § 351.

17 123. As alleged above, Plaintiff is informed, believes and based thereon alleges that
18 Defendant PB retaliated against Plaintiff in violation of California Labor Code §98.6 (a)
19 because he exercised his right to report wage and hour violations under the California Labor
20 Code.

21 124. On or about May 20, 2025, Plaintiff asked Israel to be paid a \$50 tip he was
22 given by a customer via credit card. Israel refused and terminated Plaintiff instead.

23 125. Defendant PB subjected Plaintiff to an adverse employment action by
24 terminating his employment on or about May 21, 2025, due to his complaints concerning wage
25 and hour violations.

26 126. As a direct, foreseeable, and proximate result of the conduct of Defendant PB,
27 Plaintiff has suffered, and continues to suffer loss of earnings, plus expenses incurred in
28

1 obtaining substitute employment and loss of accrued sick time, loss of job security, and all to
2 his damage in a sum to be ascertained according to proof.

3 127. As a further direct and proximate result of said Defendant PB's unlawful
4 retaliation, Plaintiff has suffered severe emotional distress, in a sum within the jurisdiction of
5 this Court, to be ascertained according to proof.

6 128. Plaintiff is informed, believes, and based thereon, alleges that the outrageous
7 conduct of Defendant PB described above, in this cause of action, was done with oppression
8 and malice by Defendant PB and was ratified by those other individuals who were managing
9 agents of Defendant PB. These unlawful acts were further ratified by the Defendant PB and
10 done with a conscious disregard for Plaintiff's rights and with the intent, design and purpose of
11 injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive or exemplary damages
12 against said Defendant PB for its acts as described in this cause of action in a sum to be
13 determined at the time of trial.

14 129. Pursuant to California Labor Code §98.6 (b)(3), Defendant PB is liable for civil
15 penalties up to \$10,000 per violation due to its violation of California Labor Code §98.6.

16 130. As a result of the retaliatory acts of Defendant PB, as alleged herein, Plaintiff is
17 entitled to reasonable attorneys' fees and costs of suit as specifically provided in California
18 Code of Civil Procedure § 1021.5.

19 **FIFTEENTH CAUSE OF ACTION**

20 **(Wrongful Termination in Violation of Public Policy– By Plaintiff Against**
21 **Defendant PB and Does 1 through 100)**

22 131. Plaintiff realleges and incorporates by reference all of the allegations set forth in
23 this Complaint.

24 132. Pursuant to *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 and *Hentzel*
25 *v. Singer Co.* (1982) 138 Cal. App. 3d 290, 301-02, 305, an employee or ex-employee may sue
26 his or her employer for wrongful termination in violation of public policy as a consequence of
27 that employee seeking to enforce California and federal laws, and when the employer, as a
28 consequence, terminates the employee from employment. Furthermore, Labor Code section

1 1102.5 and *Lujan v. Minagar* (2004) 124 Cal. App. 4th 1040 authorize Plaintiff to sue RBHG
2 and TZG for wrongful termination in violation of public policy as a result of the retaliatory
3 conduct undertaken by Defendant against Plaintiff.

4 133. Labor Code § 1102.5 prohibits termination of employment in retaliation for
5 whistleblowing.

6 134. Plaintiff voiced concerns regarding wage and hour violations and was
7 terminated shortly thereafter.

8 135. Defendant PB illegally terminated Plaintiff's employment because of Plaintiff's
9 complaints concerning the wage and hour violations, in violation of public policy expressed in
10 California law including, but not limited to, Cal. Lab. Code §1102.5.

11 136. As a proximate result of this wrongful termination in violation of public policy,
12 Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe
13 emotional distress, worry, fear, and special damages (to include lost wages) all to Plaintiff's
14 special and general damage according to proof at the time of trial.

15 137. Defendant PB did the things hereinabove alleged, intentionally, oppressively,
16 and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which
17 resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable,
18 and ought not to be suffered by any member of the community.

19 138. All actions of Defendant PB were known, ratified and approved by the officers
20 or managing agents of Defendant PB. Therefore, Plaintiff is entitled to punitive or exemplary
21 damages against the Defendant PB, in an amount to be determined at the time of trial.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
24 and against Defendants, as follows:

25 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff, in
26 the amount of at least \$110,880, according to proof;

27 2. For compensatory damages in the amount of unpaid minimum wages due to
28 Plaintiff, in the amount of at least \$110,880, according to proof;

1 3. For compensatory damages for lost wages and employment benefits, in the
2 amount of at least \$110,880, according to proof;

3 4. For compensatory damages in the amount of Plaintiff's out of pocket vehicle
4 and cell phone expenses and for purchases of tools and/or reimbursement of monies incurred
5 while performing Defendant's business-related duties, plus interest, costs and attorneys' fees
6 pursuant to Cal. Code Civ. Proc. §2802(c);

7 5. For prejudgment interest accrued on all due and unpaid overtime and minimum
8 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
9 1194(a), according to proof;

10 6. For an award of consequential damages, according to proof;

11 7. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
12 workday that a meal and/or rest period was not provided;

13 8. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

14 9. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
15 §203, in an amount equal to his respective daily rates of pay at the time of termination or
16 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
17 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
18 days' pay, according to proof;

19 10. For specific relief enforcing waiting time penalties of 30 days of per diem wages
20 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

21 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 226.7, according to
22 proof;

23 12. For reasonable costs, including attorneys' fees, in an amount according to proof
24 pursuant to *Cal. Labor Code* §§218.5, 1198.5, 2802, and/or *Cal. Code Civ. Proc.* §1021.5;

25 13. For injunctive relief ordering the continuing unfair business acts and practices to
26 cease, as the Court deems just and proper;

27 14. For other injunctive relief ordering Defendant PB to notify Plaintiff that he has
28 not been paid the proper amounts in accordance with California law;

1 15. For statutory penalties pursuant to *Cal. Lab. Code* §98.6(b)(3) in an amount of at
2 least \$10,000 per each violation;

3 16. For an accounting of all tips received by Defendants;

4 17. For an accounting of all tips paid to Defendants by credit card;

5 18. For reimbursement of tips improperly converted:

6 19. For payment of all tip monies collected, taken and received by Defendants via
7 credit card that were rightfully owed to Plaintiff;

8 20. For punitive and exemplary damages in a sum to be determined at trial;

9 21. For injunctive relief requiring Defendants to comply with Labor Code
10 §1198.5(b)(1);

11 22. That a penalty be assessed against Defendants in the sum of \$750.00 pursuant to
12 Labor Code §1198.5(k); and

13 23. For such other and further relief as the Court deems just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff Jorge Torres hereby respectfully requests a trial by jury for all claims and
16 issues raised in his Complaint that may be entitled to a jury trial.

17
18 LIPELES LAW GROUP, APC

19 Date: June 17, 2025

20
21 By: Franz J. Reece
22 Franz J. Reece
23 Attorneys for Plaintiff
24 Jorge Torres
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