

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

BURLINGTON SAFETY LABORATORY OF CALIFORNIA, INC., a
California Corporation, and DOES 1 through 10, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RICHARD DIAZ, on behalf of himself and all others similarly situated,
and on behalf of the general public,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: Orange County Superior Court
(El nombre y dirección de la corte es): Civil Complex Center
751 West Santa Ana Blvd.
Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):

30-2023-01310001-CU-OE-CXC

Judge William Cluster

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Roman Otkupman, Nidah Farishta: 5743 Corsa Ave, Suite 123, Westlake Village, CA 91362; (818)293-5623

DATE: 02/24/2023
(Fecha)

DAVID H. YAMASAKI, Clerk, by
Clerk of the Court (Secretario)

[Signature]

A. THAU, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

Roman Otkupman, CSBN 249423

Roman@OLFLA.com

Nidah Farishta, CSBN 312360

Nidah@OLFLA.com

OTKUPMAN LAW FIRM, A LAW CORPORATION

5743 Corsa Ave., Suite 123,

Westlake Village, CA 91362

Telephone: (818) 293-5623

Facsimile: (888) 850-1310

Assigned for all purposes:

Judge William D. Claster

Dept. CX104

Attorney for Plaintiff,

Richard Diaz, on behalf of himself and all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

RICHARD DIAZ, on behalf of himself and
all others similarly situated, and on behalf of
the general public,

Plaintiff,

vs.

BURLINGTON SAFETY LABORATORY
OF CALIFORNIA, INC., a California
Corporation, and DOES 1 through 10,
inclusive.

Defendants.

CASE NO. 30-2023-01310001-CU-OE-CXC

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 2. FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF (LABOR CODE § 226.7, 512 and 558);**
- 3. FAILURE TO PAY ALL WAGES IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2);**
- 4. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e), 1174(d);**
- 5. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LABOR CODE §§ 201-203);**
- 6. FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b);**
- 7. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF (LABOR CODE § 2802);**

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8. **FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF (LABOR CODE § 227.3);**
9. **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF (LABOR CODE § 210, 218, 222);**
10. **FAILURE TO PROVIDE PLACE OF EMPLOYMENT THAT IS SAFE AND HEALTHFUL IN VIOLATION OF (LABOR CODE §§ 6400, 6401, 6403, 6404, 6407, 8 CCR 3202);**
11. **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**

DEMAND FOR JURY TRIAL

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PLAINTIFF, Richard Diaz (“Plaintiff”), on behalf of himself and other “aggrieved employees” complains of Defendants as follows:

I. INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure § 382 on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by, Burlington Safety Laboratory Of California, Inc. and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”).

3. Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant’s California employees were forced to continue working through their meal and rest breaks in order to assist Defendant’s needs. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one

1 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees
2 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,
3 and IWC Order No. 5-2001, Section 12.

4 4. Plaintiff and Defendants' California employees were required to work off the clock
5 for Defendant. Defendant routinely made Plaintiff and its California employees undergo a COVID-
6 19 screening process prior to the start of their scheduled shifts. When Plaintiff would arrive, he was
7 not allowed to clock-in for the day until he passed a medical examination to screen Plaintiff for
8 symptoms of COVID-19. The time spent waiting in these COVID-19 screening line, undergoing the
9 COVID-19 screening itself, and the time between completing the COVID-19 screening took
10 Plaintiff on the average of 5 minutes to complete. Moreover, Plaintiff and Defendant's California
11 employees were instructed to answer Defendant's inquires while being off the clock. Defendants
12 did not compensate Plaintiff and Defendants' California employees if these tasks were completed
13 outside of his regular work hours. These excess hours were not recorded on our client's and
14 Defendants' California employees wage statements. Plaintiff and Defendant's California employees
15 should have been compensated for that time, but he was not in violation of Labor Code Sections
16 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid
17 for all hours worked including all straight time wages, and overtime wages. These failures to pay
18 wages constitute violations of Labor Code § 510 and 1194.

19 5. Plaintiff, on behalf of himself and all other California employees of Defendant claims
20 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
21 their employees bonuses and commissions which are not included in the employees regular rate of
22 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
23 compensated for work performed in excess of eight (8) hours in a workday and work performed in
24 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
25 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
26 1194, and 1194.2.

27 6. Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement
28 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
balance of the full amount of this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendant's California

1 employees claim that Defendant engaged in “time-shaving.” This essentially means that the
2 Defendant underpaid Plaintiff by shaving the time Plaintiff worked in violation of Labor Code
3 Section 1194(a).

4 7. Defendants have required Plaintiff and Defendant’s California employees to work
5 hours in excess of eight hours in a day and forty in a week but had not paid these employees
6 overtime compensation as required by their collective bargaining agreement in violation of Labor
7 Code § 222.

8 8. Defendants failed to issue Plaintiff and Defendant’s California employees accurately
9 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants’ California
10 employees with all wages due, as detailed above, their wage statements failed to accurately state all
11 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
12 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all
13 applicable hourly rates during the pay period and the corresponding number of hours worked, in
14 violation of Labor Code § 226(a)(9), as a result of Defendants’ failure to pay all overtime wages
15 due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
16 Plaintiff’s worked hours, due to the illegal shaving. These violations also violate Labor Code §§
17 226(e) and 226.3 with respect to Plaintiff and Defendants’ California employees.

18 9. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant’s
19 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
20 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and
21 Defendant’s California employees, and the records maintained by Defendants, have not accurately
22 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
23 premiums, and total hour worked.

24 10. Our client further alleges that Defendants paid him and Defendant’s California
25 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As
26 they were not paid all wages due and owing throughout the course of their employment as a result
27 of Defendants’ failure to pay all premium wages as detailed above, at the time of their separation,
28 they were not paid all final wages due and owing for the entirety of their employment. This violates
Labor Code §§ 201-203.

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1 11. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
2 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
3 be paid no later than seven calendar days following the close of the payroll period. Due to the
4 violations described above, Plaintiff and Defendant's California employees did not receive all of
5 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

6 12. Defendant failed to reimburse Plaintiff and Defendant's California employees for the
7 equipment they purchased to perform work for Defendant such as face masks, COVID-19 tests.
8 Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for uniform
9 maintenance. Defendant further failed to reimburse its California employees for using their personal
10 cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
12 direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's
13 California employees have incurred reasonable and necessary expenses in the course of their job
14 duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

15 13. Plaintiff alleges that Defendant failed to comply with Labor Code § 227.3, which
16 states that unless otherwise provided by a collective-bargaining agreement, whenever a contract of
17 employment or employer policy provides for paid vacations, and an employee is terminated without
18 having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his
19 final rate in accordance with such contract of employment or employer policy respecting eligibility
20 or time served; provided, however, that an employment contract or employer policy shall not provide
21 for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated
22 representative, in the resolution of any dispute with regard to vested vacation time, shall apply the
23 principles of equity and fairness, pursuant to Labor Code § 227.3. Defendant violated Labor Code §
24 227.3 because they failed to pay Plaintiff and the Aggrieved Employees wages for unused vested
25 vacation time.

26 14. Defendants failed to continue to take precautions to ensure employee safety after the
27 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome
28 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the
onset of COVID, were required to partake in mandatory temperature and health checks, but these
activities were not enforced or practiced quickly after the onset of COVID and when COVID was
still a health risk to the employees. Plaintiff and Defendant's California employees were also

1 required to provide their own masks at the workplace. As a result of these practices, Defendants have
2 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
3 and healthful environment for their Employees, as outlines above. Defendants are liable for civil
penalties pursuant to Cal. Labor Code § 2699 *et seq.*

4 15. Defendants failed to pay all wages earned to Plaintiff and Defendant's California
5 employees as a result of the unlawful employment policies and practices herein. As a result of these
6 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,
7 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
8 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
to pay wages as required by law.

9 16. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*
10 *Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and
11 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

12 17. Plaintiff, on behalf of himself and all proposed Plaintiff Class members (specifically,
13 the "California Class" as defined herein), brings this action pursuant to Labor Code §§ 226.7, 512,
14 and 558, Labor §§ 510, 1194, 1194.2, Labor § 226(a)(e), 1174(d), Labor Code § 201-203, Labor
Code § 204(a)(b), Labor § 2802, Labor § 227.3, Labor § 210, 218, 222, Labor § 6400.

15 18. Venue as to each Defendant is proper in this judicial district, pursuant to Code
16 of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts
17 alleged herein took place in Westminster, California.

18 II. PARTIES

19 A. PLAINTIFF

20 19. Plaintiff Richard Diaz is a resident of Norwalk, California. At all times relevant
21 herein, he was employed by Defendants in Orange County, California. Plaintiff was employed by
22 Defendants as a non-exempt, hourly employee in California, including in and around the city of
Westminster, County of Orange. During Plaintiff's employment:

23 A. Plaintiff did not receive final wages upon termination.

24 B. Plaintiff and the Class were not paid in a timely manner pertaining to the waiting time
25 penalties in accordance with Labor Code §§ 201-203.

26 C. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in
27 violation of Labor Code § 226(a).

1 D. Plaintiff did not receive his compensation in accordance with Labor Code Section 204 in
2 that Defendant failed to issues wages to its employees within seven (7) calendar days
3 after the pay period ended.

4 E. Plaintiff was required to work without meal and rest periods, nor compensation in lieu
5 thereof, as required by the Labor Code and relevant Wage Orders.

6 F. Plaintiff was required to work either in excess of eight hours per workday or in excess of
7 forty hours per workweek without receiving compensation at a rate of one and one half
8 the regular rate of pay.

9 G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for
10 reasonable and necessary expenses in the course of their job duties, in violation of Labor
11 Code § 2802.

12 **B. DEFENDANTS**

13 20. Defendant Burlington Safety Laboratory Of California, Inc. is doing business in
14 Westminster, California. It operates within the State of California. Defendants employed Plaintiff
15 and similarly situated employees within California. The violations alleged herein arose in
16 Westminster, California.

17 21. The true names and capacities, whether individual, corporate, associate, or otherwise,
18 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
19 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
20 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
21 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
22 seek leave of court to amend this Complaint to reflect the true names and capacities of the
23 Defendants designated hereinafter as DOES when such identities become known.

24 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
25 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
26 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
27 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
28 employer and/or joint employer of Plaintiff and the proposed Class.

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FACTUAL ALLEGATIONS

23. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

24. Plaintiff and Defendants' California employees were required to work off the clock for Defendant. Defendant routinely made Plaintiff and its California employees undergo a COVID-19 screening process prior to the start of their scheduled shifts. When Plaintiff would arrive, he was not allowed to clock-in for the day until he passed a medical examination to screen Plaintiff for symptoms of COVID-19. The time spent waiting in these COVID-19 screening line, undergoing the COVID-19 screening itself, and the time between completing the COVID-19 screening took Plaintiff on the average of 5 minutes to complete. Moreover, Plaintiff and Defendant's California employees were instructed to answer Defendant's inquires while being off the clock. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

25. Plaintiff, on behalf of himself and all other California employees of Defendant claims that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays their employees bonuses and commissions which are not included in the employees regular rate of pay for the purposes of computing the proper overtime rate. As a result, employees are not properly compensated for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular

1 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
2 1194, and 1194.2.

3 26. Additionally, Labor Code Section 1194(a) states: “[n]otwithstanding any agreement
4 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
5 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
6 balance of the full amount of this minimum wage or overtime compensation, including interest
7 thereon, reasonable attorney’s fees, and costs of suit. Plaintiff and Defendant’s California
8 employees claim that Defendant engaged in “time-shaving.” This essentially means that the
9 Defendant underpaid Plaintiff by shaving the time Plaintiff worked in violation of Labor Code
10 Section 1194(a).

11 27. Defendants have required Plaintiff and Defendant’s California employees to work
12 hours in excess of eight hours in a day and forty in a week but had not paid these employees
13 overtime compensation as required by their collective bargaining agreement in violation of Labor
14 Code § 222.

15 28. Defendants failed to issue Plaintiff and Defendant’s California employees accurately
16 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants’ California
17 employees with all wages due, as detailed above, their wage statements failed to accurately state all
18 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of
19 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all
20 applicable hourly rates during the pay period and the corresponding number of hours worked, in
21 violation of Labor Code § 226(a)(9), as a result of Defendants’ failure to pay all overtime wages
22 due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of
23 Plaintiff’s worked hours, due to the illegal shaving. These violations also violate Labor Code §§
24 226(e) and 226.3 with respect to Plaintiff and Defendants’ California employees.

25 29. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant’s
26 California employees timely, accurate, itemized wage statements in accordance with Labor Code §
27 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and
28 Defendant’s California employees, and the records maintained by Defendants, have not accurately
reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest
premiums, and total hour worked.

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1 30. Our client further alleges that Defendants paid him and Defendant's California
2 employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As
3 they were not paid all wages due and owing throughout the course of their employment as a result
4 of Defendants' failure to pay all premium wages as detailed above, at the time of their separation,
5 they were not paid all final wages due and owing for the entirety of their employment. This violates
6 Labor Code §§ 201-203.

7 31. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has
8 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must
9 be paid no later than seven calendar days following the close of the payroll period. Due to the
10 violations described above, Plaintiff and Defendant's California employees did not receive all of
11 their wages earned in a timely manner as required by Labor Code § 204(a)(b).

12 32. Defendant failed to reimburse Plaintiff and Defendant's California employees for the
13 equipment they purchased to perform work for Defendant such as face masks, COVID-19 tests.
14 Moreover, Defendant failed to reimburse Plaintiff and Defendant's California employees for uniform
15 maintenance. Defendant further failed to reimburse its California employees for using their personal
16 cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[a]n employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
18 direct consequence of the discharge of his or her duties." As such, Plaintiff and Defendant's
19 California employees have incurred reasonable and necessary expenses in the course of their job
20 duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

21 33. Plaintiff alleges that Defendant failed to comply with Labor Code § 227.3, which
22 states that unless otherwise provided by a collective-bargaining agreement, whenever a contract of
23 employment or employer policy provides for paid vacations, and an employee is terminated without
24 having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his
25 final rate in accordance with such contract of employment or employer policy respecting eligibility
26 or time served; provided, however, that an employment contract or employer policy shall not provide
27 for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated
28 representative, in the resolution of any dispute with regard to vested vacation time, shall apply the
principles of equity and fairness, pursuant to Labor Code § 227.3. Defendant violated Labor Code §
227.3 because they failed to pay Plaintiff and the Aggrieved Employees wages for unused vested
vacation time.

1 34. Defendants failed to continue to take precautions to ensure employee safety after the
2 onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome
3 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant’s California employees, directly after the
4 onset of COVID, were required to partake in mandatory temperature and health checks, but these
5 activities were not enforced or practiced quickly after the onset of COVID and when COVID was
6 still a health risk to the employees. Plaintiff and Defendant’s California employees were also
7 required to provide their own masks at the workplace. As a result of these practices, Defendants have
8 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe
9 and healthful environment for their Employees, as outlines above. Defendants are liable for civil
10 penalties pursuant to Cal. Labor Code § 2699 *et seq.*

11 35. Defendants failed to pay all wages earned to Plaintiff and Defendant’s California
12 employees as a result of the unlawful employment policies and practices herein. As a result of these
13 practices, Plaintiff and Defendant’s California employees were underpaid for hours worked,
14 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
15 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure
16 to pay wages as required by law.

17 36. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*
18 *Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and
19 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant’s California employees.

20 **CLASS ACTION ALLEGATIONS**

21 37. Plaintiff brings this action on behalf of himself and all others similarly situated as a
22 Class Action pursuant to § 382 of the Code of Civil Procedure.

23 38. Plaintiff seeks to represent a class composed of and defined as follows:

24 **THE CALIFORNIA CLASS**

25 39. All current and former California employees of Defendants since the date
26 four (4) year prior to the filing of this complaint.

27 40. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to
28 amend or modify the class description with greater specificity or further division into
subclasses or limitation to particular issues.

41. This action has been brought and may properly be maintained as a class
action under the provisions of § 382 of the Code of Civil Procedure because there is a

1 well-defined community of interest in the litigation and the proposed Class is easily
2 ascertainable.

3 **A. NUMEROSITY**

4 42. The potential members of the proposed Class as defined are so numerous that joinder
5 of all the members of the proposed Class is impracticable. While the precise number of proposed
6 Plaintiff Class members has not been determined at this time, Plaintiff is informed and believes that
7 Defendants currently employ, and during the relevant time periods employed, over seventy-five (75)
8 Class members in the State of California.

9 43. Accounting for employee turnover during the relevant periods necessarily increases
10 this number substantially. Plaintiff alleges that Defendants' employment records would provide
11 information as to the number and location of all proposed Plaintiff Class members. Joinder of all
12 members of the proposed Class is not practicable.

13 **B. COMMONALITY**

14 44. There are questions of law and fact common to the proposed Class that predominate
15 over any questions affecting only individual Class members. These common questions of law and
16 fact include, without limitation, whether Defendants failed to provide members of the Class with
17 wage statements that fully and accurately itemize the requirements set forth in Labor Code §226(a),
18 accurate final wages, and final wages on the day of termination and or within seventy-two (72) hours
19 of separation and whether the rest periods were timely made available.

20 **C. TYPICALITY**

21 45. The claims of the named Plaintiff are typical of the claims of the proposed Class.
22 Plaintiff and all members of the proposed Class sustained injuries and damages arising out of and
23 caused by Defendants' common course of conduct in violation of laws, regulations that have the
24 force and effect of law, and statutes as alleged herein.

25 **D. ADEQUACY OF REPRESENTATION**

26 46. Plaintiff will fairly and adequately represent and protect the interests of the members
27 of the proposed Class. Counsel who represents Plaintiff is competent and experienced in litigating
28 large employment class actions.

E. SUPERIORITY OF CLASS ACTION

47. A class action is superior to other available means for the fair and efficient
adjudication of this controversy. Individual joinder of all proposed Plaintiff Class members is not

1 practicable, and questions of law and fact common to the proposed Class predominate over any
2 questions affecting only individual members of the proposed Class. Each member of the proposed
3 Class has been damaged and is entitled to recovery by reason of Defendant's failure to comply with
4 Labor Code 226(a).

5 48. Class action treatment will allow those similarly situated persons to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this
8 action that would preclude its maintenance as a class action.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF** 12 **(LABOR CODE §§ 226.7, 512 and 558)**

13 49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set
14 forth herein.

15 50. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
16 provide one or more meal periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7,
17 512 and 558.

18 51. Plaintiff and Defendant's California employees were routinely unable, and not
19 authorized to take an uninterrupted 30-minute meal break for every shift they worked. Specifically,
20 Plaintiff and Defendant's California employees were forced to continue working through their meal
21 breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California
22 employees were unable to take their required meal breaks. Moreover, Defendants failed to pay
23 premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's
24 California employees who were denied timely meal and rest breaks, in violation of Labor Code §§
25 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

26 52. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all meal
27 period compensations, which he was owed since he commenced to work for Defendant, according to
28 proof.

53. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and
prejudgment interest.

54. Wherefore, Plaintiff seeks to represent request relief as described below.

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 512 and 558)**

55. Plaintiff incorporates paragraphs 1 through 54 of this Complaint as though fully set forth herein.

56. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512 and 558.

57. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed rest break to Plaintiff and Defendant's California employees who were denied timely rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

58. Pursuant to Labor Code §§ 226.7, 512 and 558 Plaintiff seeks the payment of all rest period compensations, which he was owed since he commenced to work for Defendant, according to proof.

59. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and prejudgment interest.

60. Wherefore, Plaintiff seeks to represent request relief as described below.

THIRD CAUSE OF ACTION

**FAILURE TO PAY ALL WAGES IN VIOLATION OF
(LABOR CODE §§ 510, 1194, 1194.2)**

61. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

62. During the liability period, Defendant failed to pay all wages to Plaintiff and Defendant's California employees.

63. Plaintiff and Defendants' California employees were required to work off the clock for Defendant. Defendant routinely made Plaintiff and its California employees undergo a COVID-

1 19 screening process prior to the start of their scheduled shifts. When Plaintiff would arrive, he was
2 not allowed to clock-in for the day until he passed a medical examination to screen Plaintiff for
3 symptoms of COVID-19. The time spent waiting in these COVID-19 screening line, undergoing the
4 COVID-19 screening itself, and the time between completing the COVID-19 screening took Plaintiff
5 on the average of 5 minutes to complete. Moreover, Plaintiff and Defendant's California employees
6 were instructed to answer Defendant's inquires while being off the clock. Defendants did not
7 compensate Plaintiff and Defendants' California employees if these tasks were completed outside of
8 his regular work hours. These excess hours were not recorded on our client's and Defendants'
9 California employees wage statements. Plaintiff and Defendant's California employees should have
10 been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and
11 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours
12 worked including all straight time wages, and overtime wages. These failures to pay wages
13 constitute violations of Labor Code § 510 and 1194.

14 64. Plaintiff, on behalf of himself and all other California employees of Defendant claims
15 that Defendant has failed to pay all overtime wages due to non-exempt employees. Defendant pays
16 their employees bonuses and commissions which are not included in the employees' regular rate of
17 pay for the purposes of computing the proper overtime rate. As a result, employees are not properly
18 compensated for work performed in excess of eight (8) hours in a workday and work performed in
19 excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular
20 rate of pay. These failures to pay all overtime wages constitute violations of Labor Code §§ 510,
21 1194, and 1194.2.

22 65. Additionally, Labor Code Section 1194(a) states: "[n]otwithstanding any agreement
23 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
24 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
25 balance of the full amount of this minimum wage or overtime compensation, including interest
26 thereon, reasonable attorney's fees, and costs of suit. Plaintiff and Defendant's California employees
27 claim that Defendant engaged in "time-shaving." This essentially means that the Defendant
28 underpaid Plaintiff by shaving the time Plaintiff worked in violation of Labor Code Section 1194(a).

66. As a result, Plaintiff and Defendant's California employees were not paid for all
hours worked including all straight time wages, and overtime wages. These failures to pay wages
constitute violations of Labor Code § 510 and 1194.

67. As a result of the unlawful acts of Defendants in willfully filing to pay all alleges, Plaintiff and Defendant's California employees have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor Code § 1194.2.

FOURTH CAUSE OF ACTION

**KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a),(e), 1174(d))**

68. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

69. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must accurately set forth, among other things, the total gross and net wages earned, and all hourly rates in effect, for Plaintiff. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

70. Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. Since the wage statements provided to Plaintiff failed to accurately reflect the total number of Plaintiff's worked hours, due to the illegal shaving. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

71. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hours worked.

72. The wage statements provided to Plaintiff and members of the Class fail to accurately

1 itemize in wage statements total gross and net wages earned, and all hourly rates in effect for
2 Plaintiff. Defendants' violations of Labor Code § 226(a) are knowing and intentional, and Plaintiff
3 has suffered injury as a result of the receipt of defective wage statements, thereby entitling them to
4 penalties pursuant to Labor Code § 226(e).

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES DUE AT THE TIME OF DISCHARGE IN VIOLATION**
7 **OF LABOR CODE §§ 201-202, RESULTING IN SECTION 203 WAGES AND**
8 **PENALTIES (WAITING TIME PENALTIES)**

9 73. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though
10 fully set forth herein.

11 74. At all times material herein, the California Labor Code Sections 201, 202, and
12 203 were in effect and binding on Defendant.

13 75. California Labor Code § 202 requires employers to pay employees all wages due
14 within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent
15 part that "if an employer discharges an employee, the wages earned and unpaid at the time of
16 discharge are due and payable immediately." California Labor Code § 203 provides that if an
17 employer willfully fails to timely pay such wages the employer must, as penalty, continue to
18 pay the subject employee's wages until the back wages are paid in full or an action is
19 commenced. The penalty cannot exceed 30 days of wages.

20 76. Plaintiff was entitled to compensation for unpaid wages, but to date has not
21 received such compensation. Specifically, Defendant failed to pay Plaintiff all wages due to
22 Plaintiff at the time of his separation of employment from Defendant's. Thus, since Defendant
23 failed to promptly pay Plaintiff all wages due to Plaintiff at the time of his separation of
24 employment, Defendant violated Section 201 of the Labor Code and Plaintiff is therefore
25 entitled to wages and penalties pursuant to Labor Code Section 203.

26 77. More than 30 days have passed since Plaintiff's employment ended with
27 Defendant.

28 78. As a consequence of Defendant's willful conduct in not paying wages owed to
Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for
Defendant's failure to timely pay legal wages, together with attorney's fees and cost of suit,
and interest pursuant to California Labor Code Section 218.5.

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY EMPLOYEES IN VIOLATION OF LABOR CODE § 204(a)(b)

79. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

80. At all times relevant herein, Labor Code § 204 was in full force and effect and binding on Defendants.

81. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All earned wages must be paid at least twice a month, on days designated in advance by the employer. Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid between the 16th and 26th day of the same month. Work performed between the 16th and the last day of the month must be paid between the 1st and 10th day of the following month. (Labor Code § 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

82. Defendants pay Plaintiff and its California employees on a bi-weekly basis and have failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

83. Defendants have failed to comply with the above-section because they waited longer than ten days from the close of the pay period to pay its bi-weekly paid employees.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN VIOLATION OF CALIFORNIA LABOR CODE § 2802

84. Plaintiff hereby incorporates preceding paragraphs of this Complaint as though fully set forth herein.

85. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

86. Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks, COVID-19 tests. Moreover, Defendant failed to reimburse Plaintiff and Defendant's California

1 employees for uniform maintenance. Defendant further failed to reimburse its California
2 employees for using their personal cell phones for the benefit of Defendant. Labor Code section
3 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary
4 expenditures or losses incurred by the employee in direct consequence of the discharge of his
5 or her duties.” As such, Plaintiff and Defendant’s California employees have incurred
6 reasonable and necessary expenses in the course of their job duties, which were not reimbursed
by Defendant, in violation of Labor Code § 2802.

7 87. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
8 interest and attorneys’ fees and cost, under Labor Code § 2802.

9 88. Plaintiff also requests relief as described below.

10 **EIGHTH CAUSE OF ACTION**

11 **FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN 12 VIOLATION OF LABOR CODE § 227.3**

13 89. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
14 set forth herein.

15 90. At times relevant to this Complaint, Plaintiff and Defendant’s California
16 employees were non-exempt employees of Defendants, covered by California Labor Code
17 section 227.3.

18 91. California Labor Code section 227.3 states in relevant part

19 Unless otherwise provided by a collective-bargaining agreement, whenever a
20 contract of employment or employer policy provides for paid vacations, and an
21 employee is terminated without having taken off his vested vacation time, all
22 vested vacation shall be paid to him as wages at his final rate in accordance with
23 such contract of employment or employer policy respecting eligibility or time
24 served....

25 92. Defendants employ policies which provide for vacation/PTO to Plaintiff and
26 similarly situated employees.

27 93. Plaintiff further alleges that Defendant failed to comply with Labor Code Section
28 227.3, which states that unless otherwise provided by a collective-bargaining agreement,
whenever a contract of employment or employer policy provides for paid vacations, and an
employee is terminated without having taken off his vested vacation time, all vested vacation
shall be paid to him as wages at his final rate in accordance with such contract of employment or

1 employer policy respecting eligibility or time served; provided, however, that an employment
2 contract or employer policy shall not provide for forfeiture of vested vacation time upon
3 termination. The Labor Commissioner or a designated representative, in the resolution of any
4 dispute with regard to vested vacation time, shall apply the principles of equity and fairness,
5 pursuant to Labor Code § 227.3. Defendant violated Labor Code § 227.3 because they failed to
6 pay Plaintiff and the Aggrieved Employees wages for unused vested vacation time.

7 94. Wages vest during the pay period in which they are earned. Plaintiff and
8 Defendant's California employees earned vacation/PTO wages while employed by Defendant.
9 Defendant maintained a policy in which they would not rollover vacation/PTO and/or would not
10 pay vested vacation/PTO wages upon termination.

11 95. Defendants employed policies and procedures which ensured Plaintiff and
12 similarly situated employees would not receive their accrued and vested vacation/PTO wages
13 upon termination.

14 96. Pursuant to California Labor Code section 227.3, Plaintiff and Defendant's
15 California employees and members seek their earned and vested vacation/PTO wages, plus
16 interest thereon, for the four years preceding the filing of this Complaint.

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME HOURS 19 WORKED IN VIOLATION OF (LABOR CODES §§ 210, 218, 222)**

20 97. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
21 set forth herein.

22 98. Section 2(K) or Wage Order 5 defines "hours worked" as "the rime during
23 which an employee is subject to the control of an employer, and including all the time the
24 employee is suffered or permitted to work, whether or not required to do so." Labor Code §§
25 1194 and 1197 required employers to compensate Plaintiff for all hours worked at least at a
26 minimum wage ad established by the Wage Order. Defendants did not pay for all hours worked
27 and frequently required Plaintiff to work off the clock. Defendants have been engaged in many
28 unlawful employment practices which resulted in underpayment for hours worked each pay
period as more set forth below:

99. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to
pay Plaintiff all wages earned twice during each calendar month pursuant to Labor Code §

1 204(a). Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful
2 employment policies and practices herein. As a result of these practices, Plaintiff was
3 underpaid for hours worked, including overtime and penalty wages, and this underpayment
4 resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are
5 liable under Labor Code § 210 for failure to pay wages as required by law.

6 100. Failure to Pay Overtime Wages. Defendants have required to work hours in
7 excess of eight hours in a day and forty in a week but had not paid Plaintiff overtime
8 compensation as required by their collective bargaining agreement in violation of Labor Code §
9 222. As a result, Plaintiff has been denied payment for all hours worked as required by Cal.
10 Labor Code § 222, § 1194, § 1198. Defendants are liable for civil penalties pursuant to Labor
11 Code §§ 558.

12 **TENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE PLACE OF EMPLOYMENT THAT IS SAFE AND 14 HEALTHFUL IN VIOLATION OF**

15 **(LABOR CODE §§ 6400, 6401, 6402, 6403, 6404, 6407, 8 CCR 3202)**

16 101. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
17 set forth herein.

18 102. Cal. Labor Code § 6400(a) provides that every employer shall furnish
19 employment and a place of employment that is safe and healthful for Plaintiff therein. Cal.
20 Labor Code § 6401 provides that “every employer shall furnish and use safety devices and
21 safeguard, and shall adopt and use practices, means, methods, operations, and processes which
22 are reasonably adequate to render such employment and place of employment safe and
23 healthful. Every employer.

24 103. Pursuant to Cal. Labor Code § 6402, no employer shall require, or permit any
25 employee to go or be in any employment or place of employment which is not safe and
26 healthful. Cal. Labor Code § 6403 states that no employer shall fail or neglect to provide and
27 use safety devices and safeguard reasonably adequate to render the employment and place of
28 employment safe, or adopt and use methods and processes reasonably necessary to protect the
life, safety, and health of Plaintiff and Defendant’s California employees.

104. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any
place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every

1 employer and every employee shall comply with occupational safety and health standards, with
2 Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders
3 pursuant to this division which are applicable to his own actions and conduct. Defendants failed
4 to continue to take precautions to ensure employee safety after the onset of COVID. Under LC
5 §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-
6 CoV-2). Plaintiff, directly after the onset of COVID, were required to partake in mandatory
7 temperature and health checks, but these activities were not enforced or practiced quickly after
8 the onset of COVID and when COVID was still a health risk to Plaintiff and Defendant’s
9 California employees. Plaintiff and Defendant’s California employees was also required to
10 provide their own masks at the workplace.

11 105. As a result of these practices, Defendants have violated Cal. Labor Code §§
12 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment
13 for Plaintiff, as outlines above.

14 **ELEVENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION PURSUANT TO**

16 **BUSINESS & PROFESSIONS CODE § 17200**

17 106. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully
18 set forth herein.

19 107. This is an Action for Unfair Business Practices. Plaintiff Richard Diaz brings
20 this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all
21 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
22 harmful to Plaintiff and Defendant’s California employees as a result of Defendant’s failure to
23 comply with the labor code sections as set out above including but not limited to Labor Code
24 Sections 6400, 6401, 6402, 6403, 6404, 6407. Plaintiff and Defendant’s California employees
25 seek to enforce important rights affecting the public interest within the meaning of *Code of*
26 *Civil Procedure* § 1021.5.

27 108. Plaintiff is a “person” within the meaning of *Business & Professions Code* §
28 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
and other appropriate equitable relief.

109. *Business & Profession Code* § 17200 et. seq. prohibits unlawful and unfair
business practices.

110. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the *Labor Code*, and have engaged in other unlawful and unfair business practices in violation of *Business & Professions Code* § 17200, *et seq.*, depriving Plaintiff, of rights, benefits, and privileges guaranteed to Plaintiff under law.

111. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of § 17200 *et. seq.* of the *Business & Professions Code*.

112. As a proximate result of the above mentioned acts of Defendants, Plaintiff has been damaged in a sum as may be proven.

113. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, their agents, or Plaintiff, of any unlawful or deceptive practice prohibited by the *Business & Professions Code*, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff to the money Defendants have unlawfully failed to pay.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For a money judgment representing compensatory damages including lost wages, earnings, retirement benefits and other employee benefits, and all other sums of money, together with interest on these amounts, according to proof;

2. For punitive damages, in an amount to be ascertained, according to proof, that will sufficiently punish the named Defendants, make an example of said Defendants, and deter future conduct;

3. For penalties pursuant to Labor Code § 203 for all members of the California class who are no longer employed by Defendants, equal to their daily wage multiplied by thirty (30) days;

4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and all members of the Class;

5. For penalties pursuant to Labor Code § 226.7 for Plaintiff and all members of the Class;

6. For penalties pursuant to Labor Code § 510 for Plaintiff and all members of the Class;

- 1 7. For penalties pursuant to Labor Code § 204(b) for Plaintiff and all members of the
2 Class;
3 8. For penalties pursuant to Labor Code § 2802 for Plaintiff and all members of the
4 Class;
5 9. For penalties pursuant to Labor Code § 227.3 for Plaintiff and all members of the
6 Class;
7 10. For penalties pursuant to Labor Code § 1174(d) for Plaintiff and all members of the
8 Class;
9 11. For penalties pursuant to Labor Code § 210 for Plaintiff and all members of the Class;
10 12. For penalties pursuant to Labor Code § 222 for Plaintiff and all members of the Class;
11 13. For penalties pursuant to Labor Code § 6400 for Plaintiff and all members of the
12 Class;
13 14. For restitution for unfair competition pursuant to Business and Professions Code §
14 17200 et seq., including disgorgement of profits, in an amount as may be proven;
15 15. An award of prejudgment and post-judgment interest;
16 16. An award providing for payment of costs of suit;
17 17. An award of attorneys' fees; and
18 18. Such other and further relief as this Court may deem just and proper.

19 Dated: February 24, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

20 By: 

21 ROMAN OTKUPMAN
22 Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

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

Dated: February 24, 2023

OTKUPMAN LAW FIRM,
A Law Corporation

By:



ROMAN OTKUPMAN
Attorneys for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Roman Otkupman, Esq. Bar No. 249423; Nidah Farishta, Esq. Bar No. 312360 Otkupman Law Firm, ALC 5743 Corsa Ave, Suite 123 Westlake Village, CA 91362 TELEPHONE NO.: (818) 293-5623 FAX NO.: (888) 850-1310 ATTORNEY FOR (Name): Plaintiff Richard Diaz		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: Orange County Superior Court MAILING ADDRESS: Civil Complex Center CITY AND ZIP CODE: 751 West Santa Ana Blvd. Santa Ana, CA 92701 BRANCH NAME:		
CASE NAME: Richard Diaz v. Burlington Safety Laboratory of California, Inc.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2023-01310001-CU-OE-CXC JUDGE: William D. Cluster DEPT: CX104

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Eleven (11)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 24, 2023

Roman Otkupman

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition