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Attorneys for Plaintiff ANDREW THOMAS,
on behalf of herself and all other aggrieved employees

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

ANDREW THOMAS, an individual,
on behalf of himself and other
aggrieved employees,

Plaintiff,

vs.

COLORTIME, LLC, a California
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. 23STCV07798

COMPLAINT

- 1. Penalties Under PAGA Labor Code §2698,
et seq.**
- 2. B&PC § 17200**
- 3. Failure to Pay Wages**
- 4. Meal Period Violations**
- 5. Rest Period Violations**
- 6. LC § 2802**

DEMAND FOR JURY TRIAL

1 Plaintiff ANDREW THOMAS (hereinafter “Plaintiff”), on behalf of himself and all other
2 aggrieved employees (hereinafter “Plaintiff”), and as private attorney general, hereby asserts
3 representative claims against Defendant COLORTIME, LLC, a California limited liability
4 company and DOES 1 through 100 are sometimes collectively referred to herein as
5 “Defendant”), hereby complains and alleges as follows:

6 **I. INTRODUCTION**

7 1. This is a representative action seeking recovery of civil penalties under the Private
8 Attorneys General Act of 2004 (“PAGA”), California Labor Code (“Labor Code”) §§2698, et
9 seq. PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on
10 behalf of themselves and other aggrieved current and former employees to recover civil penalties
11 for Defendant’s violations of the Labor Code, including, but not limited to Labor Code §§200, et
12 seq., 500, et seq., 1174, 1194, 1194.2, 1197, 1198, 2699, and all applicable Industrial Welfare
13 Commission (“IWC”) Orders, including IWC Wage Order 4-2001.

14 2. This action is brought as a representative action on behalf of all current and
15 former aggrieved hourly employees who were employed by Defendant in California and who
16 work or worked as non-exempt hourly employees during the applicable time period and who
17 were subject to Defendant’s pay practices, including but not limited to Defendant’s meal period
18 policy, rest period policy, minimum wage policies, minimum wage policies overtime policy, and
19 related wage and hour policies and/or practices.

20 3. As set forth in detail below, Defendant consistently implemented, maintained and
21 enforced unlawful policies and practices regarding Plaintiff in violation of California’s wage and
22 hour laws, which led to Defendant’s violations of Labor Code §§226.7, 512, 201-203, 1194,
23 1194.2, 510, 1174, 1198, 2698, et seq., 2802, and IWC Wage Order 4-2001 due to Defendant’s:
24 (1) failure to pay all wages, including minimum wages, straight time wages, and overtime
25 compensation; (2) failure to provide compliant meal periods; (3) failure to authorize and permit
26 rest periods or provide compensation in lieu thereof; (4) failure to timely pay all wages owed; (5)
27 failure to properly maintain and submit accurate itemized wage statements; and (6) requiring
28 Plaintiff and the aggrieved employees to pay for their own tools/ supplies for work without

1 reimbursement by Defendant. Such policies and practices, as described herein, violate the Labor
2 Code, and therefore trigger civil penalties under Labor Code §2699. Therefore, Plaintiff, on
3 behalf of himself and all aggrieved employees, brings this representative PAGA action pursuant
4 to the provisions of the Labor Code as referenced herein. Plaintiff seeks recovery of civil
5 penalties, reasonable attorney's fees and costs, and other relief as deemed proper.

6 4. The acts complained of herein occurred, occur and will occur, at least in part,
7 within the time period allowed by the statute or any other Complaint which has tolled the claims
8 asserted herein, up to and through the time of trial for this matter.

9 **II. THE PARTIES**

10 5. Plaintiff ANDREW THOMAS is, and was at all relevant times mentioned herein,
11 an individual residing within the State of California. Plaintiff ANDREW THOMAS worked for
12 Defendant as an employee for Defendant from 2018-2023.

13 6. Defendant is and has been, at all relevant times herein, a limited liability company
14 organized and existing under the laws of the State of California, and doing business within the
15 County of Los Angeles, in the State of California.

16 7. Defendants DOES 1 through 100, inclusive, are sued herein under fictitious
17 names. Their true names and capacities are unknown to Plaintiff. When their true names and
18 capacities are ascertained, Plaintiff will amend his complaint by inserting their true names and
19 capacities herein. Plaintiff is informed and believes and based thereon alleges, that each of the
20 fictitiously named Defendants are responsible in some manner for the occurrences herein alleged
21 and that Plaintiff's damages as herein alleged were proximately caused by those Defendants.

22 8. Defendants, and each of them, are now and/or at all times mentioned in this
23 Complaint were the agents, servants and/or employees of some or all other Defendants, and vice-
24 versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times
25 mentioned in this Complaint were acting within the course and scope of that agency, servitude
26 and/or employment.

27 9. Defendants, and each of them, are now and/or at all times mentioned in this
28 Complaint were members of and/or engaged in a joint venture, partnership and common

enterprise, and were acting within the course and scope of, and in pursuit of a joint venture, partnership and common enterprise.

10. Each reference in this complaint to “Defendant,” “Defendants,” or a specifically named Defendant refers also to all Defendants sued under fictitious names.

11. Plaintiff is informed and believes, and thereon alleges that at all relevant times herein, Defendant maintained offices, employed persons, conducted business in, and/or engaged in illegal employment practices and policies in the State of California, in various counties, including Los Angeles, San Bernardino, and Orange County.

III. JURISDICTION

12. The California Superior Court has jurisdiction in this matter due to Defendant’s aforementioned violations of California statutory law and/or related common law principles.

13. The California Superior Court also has jurisdiction in this matter because both the relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

14. The California Superior Court also has jurisdiction in this matter because Defendant’s corporate officers direct, control, and coordinate Defendant’s activities from Defendant’s offices located in the State of California.

15. The California Superior Court also has jurisdiction in this matter because during his employment with Defendant, Plaintiff herein was a California citizen and Defendant has owned and operated its business within California. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

IV. VENUE

16. Venue in Los Angeles County is proper in this matter as Defendant’s principal place of business is located at 5219 Craner Ave., North Hollywood, CA 91601. Venue is proper in this matter as Defendant’s liabilities and obligations arose, at least in part, in Los Angeles County, including Defendant’s statutory obligations to pay Plaintiff wages for all hours worked, including but not limited to, overtime wages, straight time wages, minimum wages, timely wages upon termination and/or resignation, provide legally compliant meal and rest periods, or

1 payments in lieu thereof, maintain and submit accurate wage statements, and other obligations as
2 described herein.

3 **V. COMMON FACTUAL ALLEGATIONS**

4 17. Defendant owns and operates its digital media company and business and
5 transacts business throughout California. This case arises out of Defendant's failure to comply
6 with California's wage and hour laws.

7 18. Plaintiff and the aggrieved employees who Plaintiff seeks to represent worked for
8 Defendant in hourly non-exempt positions in California, during the applicable time period.

9 19. During Plaintiff's employment, Defendant has failed to pay Plaintiff and other
10 aggrieved employees the proper amount of minimum wages, straight time and overtime wages.
11 Defendant has violated various sections of the Labor Code, including §§510 and 1194, by failing
12 to provide Plaintiff overtime compensation for work over 8 hours in a day and/or 40 hours in a
13 week, based on the Defendant's failure to pay for all time worked, and failure to pay at least
14 minimum wages for all time worked. Further, Defendant fails to provide Plaintiff and the
15 aggrieved employees for meal and rest periods.

16 20. Defendant also failed to provide Plaintiff and aggrieved employees with
17 compliant meal and rest periods under California law. Defendant failed to adopt, implement, and
18 enforce a uniform meal period policy that complied with California law. For example, Defendant
19 required Plaintiff to work through meal periods requiring Plaintiff and aggrieved employees to
20 eat while working on deadlines, thereby failing to provide Plaintiff and aggrieved employees
21 with duty-free meal periods as required by California law. Moreover, as a matter of policy
22 and/or practice, Defendant failed to pay Plaintiff and aggrieved employees one hour of pay at
23 their regular rate of pay for each workday that a 30-minute duty-free meal period was not
24 provided. Defendant also failed to keep accurate records of meal breaks taken by Plaintiff in
25 violation of Labor Code §1174 and IWC Wage Order 4-2001.

26 21. Defendant also failed to adopt, implement, and enforce a uniform rest period
27 policy that complied with California law. Defendant failed to authorize and permit Plaintiff and
28 aggrieved employees to take duty free rest periods of 10 minutes for every four hours worked or

major fraction thereof, by requiring Plaintiff and aggrieved employees to regularly work through their rest periods to complete their duties. Further, Defendant fails to authorize and permit paid rest periods. As a result of Defendant's lack of any meal or rest break policy that complies with California law, Defendant has violated Labor Code §§512 and 226.7 and the IWC Wage Order 4-2001, among other things.

22. Defendant further adopted, implemented and enforced a uniform policy and practice of requiring Plaintiff and the aggrieved employees to drive their own cars or use their own cell phones, wifi, computers, and vehicles required in order to perform their job functions and/or pay for repair of said items, without reimbursement by Defendant. Thus, Defendant is in violation of Labor Code §2802.

23. Defendant also willfully failed to provide properly itemized wage statements to Plaintiff pursuant to Labor Code §226. Violations include but are not limited to: failing to indicate total hours worked and failing to maintain accurate itemized wage statements. The failure to provide accurate itemized wage statements violates Labor Code §§226, 2699, et seq., and IWC Wage Order 4-2001.

24. Defendant willfully failed and refused to timely pay all compensation due and owing to Plaintiff, whose employment was terminated during the relevant time period, by failing to pay for minimum wages, overtime and straight time wages, failing to pay Plaintiff for time worked when employees were off-the-clock but still working, worked during meal and rest periods, failing to pay Plaintiff for an extra hour because Defendant failed to provide compliant meal and rest periods. As such, Defendant is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§201, 202, and 203.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT CLAIM

25. Plaintiff alleges and incorporates each and every one of the allegations of all preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth herein.

26. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of

2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code, may be recovered through a civil action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current or former employees.

27. Whenever the LWDA, or any of its departments, divisions, commissions, boards agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions to assess a civil penalty.

28. Plaintiff, and all hourly non-exempt respiratory therapist employees of Defendants are "aggrieved employees" as defined by Labor Code §2699, in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

29. Prior to filing this Complaint, Plaintiff gave written notice to the LWDA on January 25, 2023, via mandatory online filing through the State of California LWDA/ Department of Industrial Relations website with a copy to the employer via certified mail, of the specific provisions of this code alleged to have been violated, including listing some facts and the theories to support the alleged violations as required by Labor Code §2699.3; A true and correct copy of said Notice is attached hereto as **Exhibit 1**. Plaintiff alleges that he has exhausted all administrative remedies and filed the herein Complaint 65 days after mailing said notice. At the date of filing this Complaint, the LWDA has not responded with any intention to investigate. As such, Plaintiff has exhausted his administrative requirements pursuant to LC §2699.3(a)(1) and (2) (A-C).

30. The LWDA failed to respond to Plaintiff counsel's correspondence dated January 25, 2023 and failed to notify Plaintiff's counsel as to whether it would investigate the allegations contained therein, within 60 calendar days of the postmark date of Plaintiff' correspondence as required under Labor Code §2699.3. Plaintiff has fully complied with the notice requirements set forth in Labor Code §2699.3 in order to commence a civil action against an employer

1 pursuant to Labor Code §2699.

2 31. Defendant's failure to pay Plaintiff for all hours worked, minimum wages,
3 overtime compensation, failure to provide meal periods, failure to authorize and permit rest
4 periods, failure to pay all wages upon termination or resignation, and failure to provide accurate
5 itemized wage statements, or reimburse Plaintiff for out of pocket expenses, will subject
6 Defendant to civil penalties pursuant to, without limitation, Labor Code §§ 200, et seq., 226,
7 226.7, 510, 511, 512, 1194, 1194.2, 1197, 1198, 2699, 2802, and IWC Wage Order 4-2001.

8 32. Plaintiff is an aggrieved employee as defined in Labor Code §§2699(a) and (c),
9 and related Labor Code provisions. Plaintiff brings this cause of action on behalf of himself, as a
10 private attorney general, and in a representative capacity on behalf of other aggrieved employees,
11 affected by the labor law violations alleged herein.

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

15 34. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
16 employees are entitled to recover civil penalties for each of the Defendant's violations of
17 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and 1198
18 during the applicable limitations period in the following amounts:

19 a. For violations of California Labor Code § 204, one hundred dollars
20 (\$100.00) for each aggrieved employee for each initial violation and two hundred
21 dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of
22 the amount unlawfully withheld from each aggrieved employee for each
23 subsequent, willful or intentional violation (penalty amounts established by
24 California Labor Code § 210).

25 b. For violations of California Labor Code § 226(a), two hundred fifty dollars
26 (\$250.00) per employee for initial violation and one thousand dollars
27 (\$1,000.00) per employee for each subsequent violation (penalty amounts
28 established by California Labor Code § 226.3).

- 1 c. For violations of California Labor Code § 512, fifty dollars (\$50.00) for each
2 aggrieved employee for each initial violation for pay period for which the
3 employee was underpaid in addition to an amount sufficient to recover unpaid
4 wages and one hundred dollars (\$100.00) for each underpaid employee for each
5 pay period for which the employee was underpaid (penalty amounts established
6 by California Labor Code § 558).
- 7 d. For violations of California Labor Code § 1197, one hundred dollars
8 (\$100.00) for each aggrieved employee for each initial and intentional
9 violation per pay period (regardless of whether the initial violations
10 were intentionally committed) and two hundred fifty dollars (\$250.00)
11 for each aggrieved employee for each subsequent violation per pay period
12 (regardless of whether the initial violations were intentionally
13 committed), in addition to an amount sufficient to recover unpaid wages,
14 liquidated damages pursuant to California Labor Code § 1194.2, and applicable
15 penalties imposed pursuant to California Labor Code § 203.
- 16 e. For violations of California Labor Code §§ 201, 202, 203, and 226.7, one
17 hundred dollars (\$100.00) for each aggrieved employee per pay period for each
18 initial violation and two hundred dollars (\$200.00) for each aggrieved employee
19 per pay period for each subsequent violation (penalty amounts established by
20 California Labor Code § 2699(f)(2)).
- 21 f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code
22 of Regulations in the amount of \$50 for each aggrieved employee per pay period
23 for the initial violation, and \$100 for each aggrieved employee per pay period
24 for each subsequent violation;
- 25 g. Penalties under Labor Code §210, in addition to and entirely independent and
26 apart from other penalty provided in the Labor Code, in the amount of \$100
27 for each aggrieved employee per pay period for each violation, and \$200 for each
28 aggrieved employee per pay period for each subsequent violation, plus 25% of the

wage wrongly withheld;

- h. Penalties under Labor Code §256, in addition to and entirely independent and apart from other penalty provided in the Labor Code, including Labor Code §2699, et seq., for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;
- i. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid pursuant to Labor Code §558 provided to the affected employees;
- j. Penalties under Labor Code §226.3, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;
- k. Any and all additional penalties and sums as provided by the Cal. Labor Code and/or other statutes.

35. Pursuant to California Labor Code §2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

A. FAILURE TO PAY PROPER WAGES AND OVERTIME
COMPENSATION

36. Labor Code §1194 states that any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover the unpaid balance of the full amount of this minimum wage or overtime compensation,

1 including interest thereon, reasonable attorney's fees, and costs of suit.

2 37. Labor Code §1197 states that the minimum wage for employees fixed by the
3 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
4 than the minimum so fixed is unlawful.

5 38. Labor Code §510(a) and IWC Wage Order 4-2001 regulating payment of wages
6 in the state of California, provide that eight (8) hours of labor constitutes a day's work and any
7 work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours
8 in any one workweek shall be compensated at the rate of no less than one and one-half times the
9 regular rate of pay for each employee and any work in excess of twelve (12) hours in any one
10 workday shall be compensated at the rate of no less than twice the regular rate of pay for each
11 employee.

12 39. At all relevant times, Defendant required Plaintiff to perform work without
13 compensation in violation of the IWC Wage Order 4-2001 and the Labor Code. Specifically,
14 Plaintiff was not properly compensated at minimum wage and/or his regular rate of pay for all
15 hours worked, including for any shifts in excess of 8 hours per day. Defendant has violated
16 various sections of the Labor Code, including §§ 510 and 1194, by failing to provide Plaintiff
17 and all other aggrieved employees daily straight time, minimum wages and overtime
18 compensation for all hours worked, including over 8 hours in a day and/or 40 hours in a week
19 without a valid overtime exemption.

20 40. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff seeks recovery of
21 pre-judgment interest on all amounts recovered herein. Plaintiff further requests that this Court
22 award reasonable attorneys' fees and costs incurred in this action pursuant to Labor Code
23 §§1194(a) and/or 2699.

24 41. Plaintiff is informed and believes and thereon alleges, that at all times herein
25 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited
26 by California B&PC §17200, by failing to pay for time worked when employees were off-the-
27 clock but still working, and/or time worked during meal and rest periods. Defendant suffered or
28 permitted Plaintiff to work off the clock.

1 42. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and
2 the aggrieved employees were required to perform work off-the-clock. Despite recording time
3 on the clock, Defendant failed to pay Plaintiff and the aggrieved employees for all time worked,
4 including but not limited to straight time, overtime, and time spent traveling to job locations.
5 This failure to pay for all time worked is in violation of the Labor Code.

6 43. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
7 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not
8 limited to Labor Code §§558, 1197.1, and 2699(f).

9 **B. MEAL PERIODS (Labor Code §§226.7 and 512)**

10 44. Labor Code §512 and IWC Wage Order 4-2001 state that an employer may not
11 employ an employee for a work period of more than five (5) hours per day without providing the
12 employee a meal period of not less than 30 minutes, and an employer may not employ an
13 employee for a work period of more than 10 hours per day without providing the employee with
14 a second meal period of not less than 30 minutes. Wage Order 4-2001 states that unless the
15 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
16 considered an “on duty” meal period and counted as time worked. Labor Code §226.7(a) further
17 states that no employer shall require any employee to work during any meal or rest period
18 mandated by an applicable order of the IWC. Moreover, an employer is prohibited from exerting
19 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
20 skipping of legally protected breaks.

21 45. Plaintiff was not provided with nor given the opportunity to take the requisite
22 meal periods before the end of the first 5 hours of work, nor were he and the aggrieved
23 employees provided with or given the opportunity to take a proper second meal period during the
24 days when they worked more than 10 hours in a day. Defendant failed to provide Plaintiff and
25 the aggrieved employees with meal and rest periods under California law. Defendant failed to
26 adopt, implement, and enforce a uniform meal period policy that complied with California law.
27 For example, Plaintiff alleges that the aggrieved employees were not provided timely meal
28 periods for every five (5) hours worked, due to understaffing, no relief personnel, and heavy

workload. Further, given the travel involved for this job, Plaintiff and aggrieved employees would have to eat a meal while driving to the next job. This is not a compliant meal period, as the meal periods are not thirty (30) minutes of uninterrupted duty-free time.

46. Pursuant to Labor Code §226.7(b) and IWC Wage Order 4-2001, if an employer fails to provide an employee a meal period in accordance with the applicable provisions of IWC Wage Order 4-2001, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. As such, Plaintiff is entitled to an additional one hour's pay for each day in which Plaintiff was not provided a proper meal break under the above-described authorities.

47. Labor Code §558 and IWC Wage Order 4-2001 state, in pertinent part, that any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of any provision regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. Pursuant to this code section and/or wage order, Plaintiff is entitled to civil penalties for each pay period in which Defendant underpaid his wages as set forth herein.

48. Plaintiff requests that the Court award interest on all unpaid wages at the legal rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable pursuant to Labor Code §218.6.

49. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited to Labor Code §§558 and 2699(f).

C. REST PERIODS (Labor Code §226.7)

50. IWC Wage Order 4-2001 states that every employer shall authorize and permit all employees to take rest periods. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major

1 fraction thereof. An employer must provide employees with 10 minutes rest for shifts from three
2 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
3 30 minutes for shifts of more than 10 hours up to 14 hours, and so on. Furthermore, Labor Code
4 §1198 provides, in pertinent part: . . . 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 unlawful”.

6 51. Plaintiff was not permitted to take proper rest periods and/or were required to
7 work during any “rest periods” in contravention of California law. Further, Plaintiff was
8 regularly not provided with the opportunity to take proper rest periods. Defendant fails to
9 authorize and permit employees from taking compliant rest periods by failing to authorize and
10 permit a rest period for every four (4) hours or major fraction thereof.

11 52. Pursuant to Labor Code §226.7(b) and IWC Wage Order 4-2001, if an employer
12 fails to provide an employee a rest period in accordance with the applicable provisions of IWC
13 Wage Order 4-2001, the employer shall pay the employee one (1) hour of pay at the employee’s
14 regular rate of compensation for each workday that the rest period is not provided.

15 53. As such, Plaintiff is entitled to an additional one hour of pay for each day in
16 which they were not provided a proper rest period under the above-described authorities.

17 54. Plaintiff requests that the Court award interest on all unpaid wages at the legal
18 rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable
19 pursuant to Labor Code §218.6.

20 55. Labor Code §558 and IWC Wage Order 4-2001 state, in pertinent part, that any
21 employer or other person acting on behalf of an employer who violates, or causes to be violated,
22 a section of any provision regulating hours and days of work in any order of the IWC shall be
23 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
24 underpaid employee for each pay period for which the employee was underpaid; (2) For each
25 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
26 period for which the employee was underpaid. Pursuant to Labor Code §§558, 1198 and 2699,
27 and/or IWC Wage Order 4-2001, Plaintiff is entitled to civil penalties for each pay period in
28 which Defendant underpaid their wages as set forth herein.

1 56. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiff is aggrieved
2 employees, entitled to recover civil penalties pursuant to the Labor Code, including but not
3 limited to Labor Code §§558, 2699(f), and IWC Wage Order 1, 4, or 16-2001.

4 **D. FAILURE TO PAY ALL WAGES**

5 57. Labor Code §510(a) states in pertinent part: “Any work in excess of eight hours in
6 one workday and any work in excess of 40 hours in any one workweek . . . shall be compensated
7 at the rate of no less than one and one-half times the regular rate of pay for any employee.”

8 58. IWC Wage Order 4-2001 §4(A) states: “Every employer shall pay to each
9 employee wages not less than [the minimum wage] per hour for all hours worked. . . .”

10 59. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser
11 wage, any employee receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil action the unpaid
13 balance of the full amount of this minimum wage or overtime compensation, including interest
14 thereon, reasonable attorneys’ fees, and costs of suit.” Labor Code §1194.2 further provides that
15 “an employee shall be entitled to recover liquidated damages in an amount equal to the wages
16 unlawfully unpaid and interest thereon.”

17 60. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by
18 the Labor Commission is unlawful.

19 61. Further, pursuant to Labor Code §1198, it is unlawful to employ persons for
20 longer than the hours set by the IWC or under conditions prohibited by the IWC Wage Orders.

21 62. Pursuant to the IWC Wage Orders, Defendant is required to pay Plaintiff for all
22 hours worked, including the time that Plaintiff and aggrieved employees were suffered or
23 permitted to work, whether or not required to do so.

24 63. Defendant, as a matter of established company policy and procedure,
25 administered a uniform policy and practice of paying Plaintiff and the aggrieved employees for
26 all time worked, including but not limited to traveling on errands, meal and rest periods. During
27 the course of Plaintiff’s employment, Plaintiff and the aggrieved employees were not paid for
28 actual time worked.

64. Defendant's failure to pay Plaintiff his wages for time actually worked violates Labor Code §204 based on Defendant's non-payment of all wages due during the time periods required by that code section.

65. Labor Code §558 and IWC Wage Order 4-2001 state, in pertinent part, that any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of any provision regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. Pursuant to this code section and/or wage order, Plaintiff is entitled to civil penalties for each pay period in which Defendant underpaid his wages as set forth herein.

66. Plaintiff requests that the Court award interest on all unpaid wages at the legal rate specified by Civil Code §3289(b), accruing from the date the wages were due and payable pursuant to Labor Code §218.6.

67. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved employee, entitled to recover civil penalties pursuant to the Labor Code, including but not limited to Labor Code §§210, 558 and 2699(f).

**E. FAILURE TO PROPERLY MAINTAIN AND SUBMIT ACCURATE
ITEMIZED WAGE STATEMENTS (Labor Code §226)**

68. Labor Code §§226, 1174, and/or IWC Wage Order 4-2001 require employers to maintain and provide its employees accurate time and employment records, as well as itemized wage statements showing, among other things, the name of the employer, gross wages earned, the total hours worked by the employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Furthermore, Wage Order No. 4-2001 and Labor Code §226 requires every employer to keep accurate information with respect to each employee, including: (1) the employee's full name, home address, occupation, social security number, employee's date

1 of birth, and time records showing when the employee begins and ends each work period; (2) an
2 employee's meal periods; (3) total wages paid each payroll period; and (4) total hours worked
3 during the payroll period and applicable rates of pay.

4 69. Defendant fails to authorize and permit employees from taking compliant rest
5 periods by failing to authorize and permit a rest period for every four (4) hours or major fraction
6 thereof. Plaintiff is informed and believes that these failures were knowing and intentional by
7 Defendant as Defendant sought to deprive Plaintiff of his legitimate right to unpaid wages, and
8 otherwise deprive them of their proper compensation. As a result of Defendant's intentional and
9 knowing failure to maintain adequate itemized statements, Plaintiff could not ascertain the actual
10 amount of compensation they earned and/or were entitled to, and thereby are presumed to have
11 suffered cognizable injury in the form of the accrual of unpaid wages, overtime, and interest
12 pursuant to Labor Code §226(e)(2).

13 70. Pursuant to Labor Code §226(e), an employee who suffers injury as a
14 result of an employer's knowing and intentional failure to comply with subdivision (a), is
15 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
16 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
17 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
18 is entitled to an award of costs and reasonable attorney's fees. Plaintiff has suffered injury and is
19 entitled to Labor Code § 226 penalties accordingly.

20 71. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
21 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not
22 limited to Labor Code §§226.3, 1174.5 and 2699(f), as well as reasonable attorneys' fees and
23 costs.

24 **F. WAITING TIME PENALTIES (Labor Code §§201-203)**

25 72. Labor Code §201 states that an employer is required to provide an employee who
26 is terminated all unpaid wages immediately upon termination.

27 73. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay
28 Plaintiff all wages due and owing immediately upon termination, thereby violating Labor Code

1 §201.

2 74. Labor Code §202 states, in pertinent part, that an employer is required to provide
3 an employee who quits his or her employment all wages due and owing not later than 72 hours
4 thereafter.

5 75. Plaintiff is informed and believes and thereon alleges that Defendant failed to pay
6 Plaintiff and the Aggrieved Employees all wages due and owing upon termination, thereby
7 violating Labor Code §202.

8 76. Labor Code §203 states that if an employer willfully fails to pay an employee's
9 wages according to Labor Code §§201 and 202, these wages shall continue as a penalty for up to
10 a maximum of 30 days.

11 77. Defendant willfully withheld paying Plaintiff's wages thereby violating Labor
12 Code §203. As such, Defendant is required to pay Plaintiff a 30-day wage penalty in addition to
13 all unpaid wages as described herein.

14 69. Pursuant to Labor Code §§2699, 2699.3, and/or 2699.5, Plaintiff is an aggrieved
15 employee, entitled to recover civil penalties pursuant to the Labor Code, including but not
16 limited to Labor Code §§256 and 2699(f).

17 **G. All CLAIMS**

18 70. Pursuant to Labor Code §2699, Plaintiff seeks to recover civil penalties, as
19 otherwise provided by statute and wage order, for which Defendant is liable as a result of its
20 violations of the Labor Code and applicable wage order(s) in an amount to be proven at trial.
21 These penalties include, but are not limited to, those provided by Labor Code §§558, 210, 226.3,
22 256, 1174.5, 1197.1, and 2699. Plaintiff further seeks an award of reasonable attorneys' fees and
23 costs pursuant to the Labor Code §2699(g)(1) and any other applicable statute.

24 **SECOND CAUSE OF ACTION**

25 **(Violation of B&PC §17200, et seq.)**

26 71. Plaintiff re-alleges and incorporates by reference herein the allegations of all
27 preceding paragraphs as though fully set forth herein.

28 72. Beginning on an exact date unknown to Plaintiff, Defendant engaged in a pattern

and practice of acts of unfair competition in violation of B&PC §17200.

FAILURE TO PAY PROPER WAGES

73. Plaintiff is informed and believes and thereon alleges that as part of Defendant's ongoing unfair business practice, Plaintiff was employed and scheduled as a matter of established company policy to work, and in fact, worked shifts in excess of eight (8) hours per day. The hours worked by Plaintiff is in excess of eight (8) hours per day, and in excess of forty (40) hours per week without being provided all their meal/rest periods or missed meal and rest period payments at the correct regular rate. The Defendant is in violation of Labor Code §§ 226.7 and 512, and Industrial Welfare Commission Orders 4-2001, et seq.

74. Defendant, consistently administered a corporate policy regarding, staffing levels, duties and responsibilities of Defendant's employees, which required that the entirety of the employees work without meal and rest periods or without proper premium pay. Further, the Plaintiff is entitled to restitution of these wages obtained by Defendant.

75. This corporate policy and pattern of conduct is accomplished with the advance knowledge and designed intent not to pay the employees at a premium rate for all missed meal and rest period premiums paid. Further, the Plaintiff is entitled to restitution of these wages obtained by Defendant.

76. The Plaintiff is entitled to restitution of all unpaid wages obtained by Defendant. Any business act or practice that violates the Labor Code through a failure to pay wages is by definition an unfair business practice under §17200. Section 17200 provides an action to recover wages as restitution. Defendant's failure to properly pay all wages, including missed meal and rest period premiums at the correct regular rate.; Unpaid premium pay at the correct regular rate is recoverable as restitution under Section 17203

77. Plaintiff was employed and schedule as a matter of established company policy to work, and in fact, worked over eight (8) hours. The hours worked by Defendant's hourly employees is in excess of eight (8) hours per day, and in excess of forty (40) hours per pay period without receiving the required meal and rest periods and/or premium pay for such violation of Labor Code §§ 203, 512, and the relevant Industrial Welfare Commission orders.

1 78. Defendant consistently administered a corporate policy regarding both staffing
2 levels, duties and responsibilities of Defendant's employees, which required that the entirety of
3 the employees to work without meals and rest periods and/or premium pay at (1) regular rate of
4 pay. Accordingly, Plaintiff is entitled to one (1) regular rate of pay and missed break
5 compensation under California law. The general public is entitled to the disgorged profits
6 obtained by Defendant. Furthermore, the Defendant has failed to properly include items of
7 remuneration when determining the employees' regular rate, this includes but is not limited to the
8 failure to include the shift differentials and non-discretionary bonuses paid to all eligible
9 employees.

10 **VIOLATION OF MEAL PERIOD PROVISIONS**

11 79. Defendant's improper meal policies are in violation of California law including,
12 but not limited to Labor Code § 226.7, 512, and IWC Wage Order 4-2001. The Plaintiff and the
13 aggrieved employees are entitled to a half hour meal period for every five (5) hours of their shift
14 worked. Defendant violated the meal break provisions and did not provide Plaintiff with duty
15 free meal periods for every five (5) hours of his shift worked. Plaintiff was entitled to 1 hour of
16 pay for each meal break violation at their regular rate of pay.

17 80. Defendant failed to provide, impeded and/or discouraged Plaintiff from taking
18 timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during the
19 relevant time period and/or failed to obtain legal waivers waiving the first or second meal period
20 in a shift in excess of 10 hours.

21 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

22 81. Plaintiff is entitled to the benefits of Labor Code § 226.7 and Order 4-2001 of the
23 Industrial Welfare Commission. Pursuant to Labor Code § 226.7 and Wage Order 4-2001,
24 Plaintiff was entitled to separate rest periods of at least 10 minutes for each four-hour period of
25 work or major fraction thereof, and one hour of additional pay for every shift a rest period was
26 not provided in conformance with this obligation.

27 82. Plaintiff is informed and believes, and thereon alleges that Defendant consistently
28 compelled Plaintiff to work more than four (4) hours, to take only one (1) rest break during their

1 shifts, instead of two (2) rest breaks required depending on shift length. Further, Plaintiff alleges
2 Defendant failed to provide duty-free rest periods and off-site rest periods to Plaintiff.

3 83. Plaintiff is entitled to and seeks such relief as may be necessary to restore to him
4 the money and property which Defendant has acquired, or of which Plaintiff has been deprived
5 by means of the herein described unfair, unlawful, and/or fraudulent business practices.

6 84. Plaintiff is further entitled to and does seek a declaration that the above-described
7 business practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining
8 Defendant from engaging in any of the herein described unfair, unlawful, and/or fraudulent
9 business practices at all times in the future.

10 85. Plaintiff seeks restitution and injunctive relief for all the aforementioned
11 violations.

12 86. Plaintiff seeks full restitution of said monies, as necessary and according to proof,
13 to restore any and all monies withheld and/or acquired by Defendant by means of the unfair
14 business practices complained of herein. The restitution includes all wages withheld by
15 Defendant as a result of the unfair business practices, including interest thereon. Absent a
16 statutory provision specifically governing the type of claim at issue, the prejudgment interest rate
17 is 10 percent.

18 87. Plaintiff is informed and believes and thereon allege that at all times herein
19 mentioned, Defendant has engaged in unlawful, deceptive, and unfair business practices
20 prohibited by California B&PC §17200, thereby depriving Plaintiff the minimum working
21 condition, standards and conditions due to him under the California labor laws and Industrial
22 Welfare Commission wage orders as specifically described herein.

23 88. By and through its unfair, unlawful, and/or fraudulent business practices and acts
24 described herein, Defendant has obtained valuable services from Plaintiff and has deprived
25 Plaintiff of valuable rights and benefits guaranteed by law, all to his detriment.

26 89. Plaintiff is entitled to and does seek such relief as may be necessary to restore to
27 him the money and property which Defendant has acquired, or of which Plaintiff has been
28 deprived by means of the herein described unfair, unlawful, and/or fraudulent business practices.

1 90. Plaintiff is further entitled to and does seek a declaration that the above-described
2 business practices are unfair, unlawful, and/or fraudulent, and injunctive relief restraining
3 Defendant from engaging in any of the herein described unfair, unlawful, and/or fraudulent
4 business practices at all times in the future.

5 91. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
6 §1021.5 since this action is brought to vindicate important rights of the general public.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL BREAKS**

9 92. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
10 paragraphs above.

11 93. Labor Code §226.7 requires an employer to pay an additional hour of
12 compensation for each meal period the employer fails to provide. Plaintiff alleges that
13 Defendant failed to provide legally compliant meals in addition to impeding, discouraging and/or
14 dissuading Plaintiff from taking legally compliant meal periods. Employees are entitled to a
15 meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff worked over
16 five (5) hour shifts without meal periods due to Defendant's policy of discouraging, dissuading
17 and/or impeding Plaintiff from taking meal periods. Plaintiff is entitled to a meal period of not
18 less than thirty (30) minutes prior to exceeding five (5) hours of employment, and a second meal
19 period for hours worked over ten (10) in a day.

20 94. Defendant failed to provide, impeded and/or discouraged Plaintiff from taking
21 timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during the
22 relevant time period and/or failed to obtain legal waivers waiving the right to a meal period.
23 Further, Plaintiff alleges that Defendant failed to pay missed meal premiums at the proper
24 regular rate, by failing to include all remuneration into the regular rate, including but not limited
25 to flat sum bonuses, and any other remuneration paid in pay period and required to be included in
26 the regular rate and thus, underpaid premiums it did pay, pursuant to *Ferra v. Loews Hollywood*
27 *Hotel, LLC* (2021) 11 Cal.5th 858.

28 /////

1 95. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount
2 equal to one (1) hour of wages per missed meal break, in a sum to be proven at trial.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

5 **(Against All Defendants)**

6 96. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
7 aforementioned allegations.

8 97. Plaintiff alleges that Defendant violated Labor Code §226.7 & the applicable
9 Wage Order. Section 226.7 of the Labor Code requires an employer to pay an additional hour (1)
10 of compensation for each rest period the employer fails to provide. Hourly non-exempt
11 employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked or
12 major fraction thereof. The Defendant's policy discourages, dissuades, and prevents all hourly
13 non-exempt employees from taking a duty-free rest period break for any work period that is
14 greater than two (2) hours up to four (4) hours. Plaintiff consistently worked over four (4) hours
15 per shift with no duty-free, off-premises rest breaks, due to Defendant's policy of discouraging,
16 dissuading and/or preventing Plaintiff from taking said breaks off-premises.

17 98. Further, even if rest premiums were paid, they were not paid at the correct regular
18 rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. This includes any
19 additional remuneration paid to Plaintiff that is required to be included in the regular rate,
20 including but not limited to flat sum bonuses, and any other remuneration paid to the hourly
21 employees during the week the penalty was paid. Thus, Defendant underpaid the premiums
22 when it paid said premiums.

23 99. Pursuant to Labor Code §226.7, Plaintiff is entitled to damages in an amount
24 equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest break
25 violation, in a sum to be proven at trial.

26 /////

27 /////

28 /////

1 **FIFTH CAUSE OF ACTION**

2 **Work Expense Reimbursement Violations**

3 **(Violation of Labor Code § 2802)**

4 **Against All Defendants**

5 100. Plaintiff re-alleges and incorporates by reference herein, the allegations of all
6 preceding paragraphs as though fully set forth herein.

7 101. Labor Code § 2802(a) requires “[a]n employer [to] indemnify his or her employee
8 for all necessary expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
10 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
11 unlawful.”

12 102. Defendant and each of them maintained and enforced a policy requiring Plaintiff
13 to drive his own car, use his own personal cell phone, wifi, computer, and vehicle required in
14 order to perform his job functions and/or pay for repair of said items.

15 103. Despite requiring Plaintiff to his own car, use his own personal cell phone, wifi,
16 computer, and vehicle required in order to perform his job functions and/or pay for repair of said
17 items, Defendant failed to reimburse Plaintiff and aggrieved employees for the costs of using and
18 purchasing such items.

19 104. Accordingly, Plaintiff is entitled to full compensation for out-of-pocket costs for
20 the purchase and use of such items and services at the direction of Defendant, in an amount to be
21 proven at trial, plus attorney fees, costs of suit, and interest, pursuant to Labor Code § 2802.

22 **PRAYER**

23 WHEREFORE, Plaintiff prays:

24 **As to the First Cause of Action:**

25 1. On behalf of all current and former employees, for all civil penalties authorized
26 by Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558
27 plus Labor Code §1197.1 for former or current employees who are due wage payments;

28 2. For civil penalties per Labor Code §226.3 in the amount of \$250 for each

aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

3. For civil penalties per Labor Code §256 in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

4. For civil penalties, pursuant to Labor Code § 558 as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid;

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid;

5. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

6. For civil penalties under Labor Code §2699(f), in addition to and entirely independent and apart from other penalty provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation.

As to the Second Cause of Action

7. For an order preliminarily and permanently enjoining Defendant from engaging in the practices challenged herein;

8. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendant by means of the unfair practice complained of herein. The restitution includes all monies retained as wages, as defined in Labor Code §§ 200, et seq., 512, and interest, and attorneys' fees as a result of the unfair business practices or retained in violation of Labor Code §512 and IWC Wage Order 4-2001;

////

1 9. For an order finding and declaring that Defendant's acts and practices as
2 challenged herein are unlawful, and unfair and/or fraudulent;

3 10. For an order requiring Defendant to make full restitution and payment pursuant to
4 B&PC Sections 17200, et seq. for unfair business practices that violate Labor Code §§ 200, et
5 seq., 512 and the applicable wage order;

6 11. For reasonable attorneys' fees under Code of Civil Procedure §1021.5 all other
7 appropriate declaratory and equitable relief;

8 12. For pre-judgment interest to the extent permitted by law;

9 13. For pre-judgment interest to the extent permitted by law and the California
10 Constitution;

11 **As to the Third Cause of Action:**

12 14. One (1) hour of pay at each of the employees' regular rate of compensation for
13 each workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

14 **As to the Fourth Cause of Action:**

15 15. One (1) hour of pay at each of the employees' regular rate of compensation for
16 each workday that a rest break was not remitted or authorized, or was impeded, discouraged
17 and/or dissuaded.

18 **As to Fifth Cause of Action:**

19 16. For reimbursement of all costs and losses necessarily incurred by Defendant's
20 requirement that Plaintiff purchase his own home internet service, utilize his personal vehicle
21 and purchase gas for said vehicle for travel between job locations;

22 17. For prejudgment interest as allowed by Labor Code § 2802(b);

23 18. For an award of reasonable attorneys' fees and costs;

24 **As to All Causes of Action:**

25 19. For reasonable attorneys' fees and costs incurred;

26 20. For such other and further relief as this Court may deem just and proper.

27 /////

1 Dated: April 7, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

2
3
4 By:


Janelle Carney, Attorney for Plaintiff

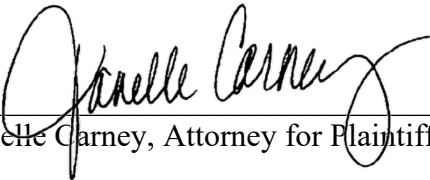
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: April 7, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

By:



Janelle Carney, Attorney for Plaintiff

Exhibit 1



PAGA Administrator
CA Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

Via: <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

ColorTime, LLC
5219 Craner Ave.
North Hollywood, CA 91601

Via: Certified U.S. Mail/ Return Receipt Requested

Re: Thomas v. ColorTime, LLC

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION §§ 2699, *et seq.***

To: California Labor and Workforce Development Agency and ColorTime, LLC

From: Andrew Thomas, on behalf of himself and all aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Please be advised that Janelle Carney – Attorney at Law, APC and Frontier Law Center represent Andrew Thomas on behalf of himself and the State of California and all other aggrieved employees (“Plaintiff”) with respect to the employment issues with ColorTime, LLC (hereinafter referred to as “ColorTime”)

Mr. Thomas believes and will allege that ColorTime has committed numerous violations of the California Labor Code, including, but not limited to, §§ 200, *et seq.*, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, and 2802. The facts and theories to support the alleged violations are set forth herein.

FACTUAL STATEMENT

Please note that this firm represents the interests of Andrew Thomas, a former hourly employee of ColorTime, and Mr. Thomas seeks to represent all other aggrieved employees who are/were non-exempt hourly employees for ColorTime for the following Labor Code violations.

THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

A. Underpayment of Wages

Plaintiff, Andrew Thomas, is a former hourly employee of ColorTime. Mr. Thomas intends to sue ColorTime on behalf of himself and all non-exempt hourly employees of ColorTime. Mr. Thomas does not yet know the specific job titles of all non-exempt persons. During his employment, ColorTime failed to pay Mr. Thomas and other aggrieved employees the proper amount of straight time and overtime wages. ColorTime has violated various sections of the Labor Code, including §§ 510, 1194, and 1198, by failing to provide Mr. Thomas and all other aggrieved employees daily straight time, minimum wages and/or overtime compensation for all hours worked, including over 8 hours in a day and/or 40 hours in a week without a valid overtime exemption.

Here, ColorTime failed to pay Mr. Thomas and the aggrieved employees for all hours they worked. Specifically, ColorTime required Mr. Thomas and the aggrieved employees to perform work off-the-clock. Specifically, requiring employees to work through meal periods without a valid on-duty meal agreement, and by asking employees to clock out but keep working, so as not to accrue overtime, and run work-related errands off the clock. As an example, Mr. Thomas was required to drive to his boss' house to deliver items yet was not paid for such time.

B. Meal and Rest Breaks

1. Meal Break Claims

ColorTime also failed to provide Mr. Thomas and the aggrieved employees with meal and rest periods under California law. ColorTime failed to adopt, implement, and enforce a uniform meal period policy that complied with California law. Further, ColorTime failed to pay Mr. Thomas and the aggrieved employees one (1) hour of pay at their regular rate for those missed meals.

As a result of ColorTime's meal period violations, ColorTime has violated Labor Code § 512 and 226.7 and the applicable Industrial Welfare Commission wage order.

2. Rest Breaks Claims

ColorTime fails to authorize and permit employees to take compliant rest periods by failing to authorize and permit a rest period for every four (4) hours or major fraction thereof. ColorTime failed to provide its hourly employees with relief in order to take duty-free rest periods, failed to authorize and permit hourly employees from taking timely ten (10) minute rest periods, and/or failed to pay the one (1) hour of pay at the regular rate for said missed rest breaks.

C. Wage Statement Violations

Mr. Thomas alleges that ColorTime willfully failed to provide accurate itemized wage statements to him and other aggrieved employees pursuant to Labor Code § 226. Specifically, ColorTime's wage statements fail to include accurate information and are uniform for all employees. This is a derivative and stand-alone claim as ColorTime's pay stubs do not contain required elements of Labor Code §226, including total hours worked.

D. Waiting Time Penalties

ColorTime willfully failed and refused to timely pay all compensation due and owing to all employees who left employment with ColorTime during the relevant time period, by failing to pay proper overtime premium and straight time and minimum wages, failing to pay Mr. Thomas and the aggrieved employees for time worked during meal periods, failing to pay for an extra hour at the employee's regular rate because ColorTime failed to provide compliant meal or rest periods. This claim is both stand-alone and derivative, as Mr. Thomas was terminated and was not paid his final check at the time of his termination. As such, ColorTime is liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, 203, and 256.

E. Violation of Labor Code Section 2802 – Indemnification for Expenses and Losses

Labor Code section 2802 states 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..."

In this case, Mr. Thomas and the Aggrieved Employees were required to use their own personal cell phones, computers, wifi, and/or vehicle for performing work-related tasks in the course and scope of their employment, but were never reimbursed for these expenditures. Accordingly, ColorTime is subject to civil penalties listed in Labor Code section 2699.

Pursuant to Labor Code § 2699.3, the undersigned, on behalf of Mr. Thomas and all other aggrieved employees, is hereby written notice of the alleged Labor Code violations.

Reservation of Rights

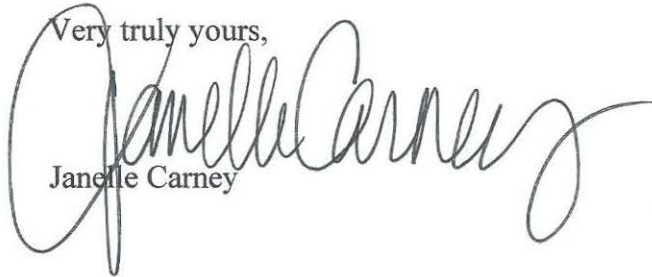
The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Thomas becomes aware of additional compensation owed or losses incurred by Mr. Thomas or by any other aggrieved employee of ColorTime, Mr. Thomas expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

January 24, 2023

Page 4

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Mr. Thomas intends to pursue his claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for ColorTime that were subject to the same Labor Code violations described above.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Janelle Carney". The signature is written in black ink and is positioned to the right of the typed name "Janelle Carney".

Janelle Carney

JC/jw