

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

Attorneys for Plaintiff

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/30/2023
By /s/ Vanessa Jimenez
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

DARIUS PRICE, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

MCGEE AIR SERVICES, INC.; and DOES 1
through 100, inclusive,

Defendants.

Case No. 23-CIV-00342

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

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

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Darius Price (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against McGee Air Services, Inc.;
3 and Does 1 through 100, inclusive (collectively, “Defendants”), and on information and belief
4 alleges as follows:

5 **JURISDICTION**

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

14 **VENUE**

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

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times
22 Plaintiff was, and is, a California resident. During the four years immediately preceding the filing
23 of this action and within the statute of limitations periods applicable to each cause of action herein,
24 Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim
25 of Defendants’ policies and/or practices complained of herein, lost money and/or property, and
26 has been deprived of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7,
27 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq*; Business & Professions Code § 17200, *et*
28 *seq.*; and Wage Order 9, which sets employment standards for the transportation industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
2 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as an airport and airline service company, and that they employed Plaintiff and other
4 similarly situated non-exempt employees in San Mateo County and the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Classes (as defined in Paragraph 15) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

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

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

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 Members (as defined in Paragraph 15).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee from
28 approximately November 2020 until approximately March 2022.

1 10. During Plaintiff's employment with Defendants, Defendants utilized a
2 timekeeping system which has resulted in Plaintiff and other non-exempt employees not being
3 compensated for all hours worked. Specifically, for at least a portion of the putative class period,
4 Defendants have required Plaintiff and other non-exempt employees to clock in and out using an
5 electronic or digital timekeeping system, and recorded their hours worked to the minute.
6 However, Defendants have rounded and/or time-shaved Plaintiff's and other non-exempt
7 employees' time records such that they are not paid for all hours worked. For example, on March
8 2, 2022, Plaintiff's time records indicate that he clocked in at 3:56 p.m., clocked out for lunch at
9 7:17 p.m. (and thus worked 3 hours 21 minutes, or 3.35 hours, prior to lunch), and that he clocked
10 back in from lunch at 7:47 p.m. and clocked out for the day at 12:32 a.m. (and thus worked 4
11 hours 45 minutes, or 4.75 hours, after lunch, for a total of 8.1 hours). However, rather than paying
12 Plaintiff's hours worked to the minute, Defendants rounded Plaintiff's clock in time to 4:00 p.m.
13 and paid him for only 3.28 hours prior to lunch, and rounded his clock-out time to 12:30 a.m. and
14 paid him for only 4.72 hours after lunch. Defendants therefore only paid Plaintiff for exactly 8.0
15 hours that workday, under-paying Plaintiff by 6 minutes (0.1 hours) on that workday. Overall,
16 during the workweek of February 27 to March 5, 2022, Defendants underpaid Plaintiff by about
17 18 minutes due to this rounding/time-shaving practice. On information and belief, Defendants'
18 practice of rounding and/or time-shaving Plaintiff's and other non-exempt employees' time
19 records was in a manner that resulted in Plaintiff and other non-exempt employees not being paid
20 for all hours worked. As a result of this policy/practice, Plaintiff and other non-exempt employees
21 have not been paid at least the minimum wage for all hours worked.

22 11. Defendants have also failed to pay meal period premiums to Plaintiff and other
23 non-exempt employees at one hour of their "regular rate of compensation" as required under
24 Labor Code § 226.7. The California Supreme Court has held that the terms "regular rate of pay"
25 used in Labor Code § 510 and "regular rate of compensation" used in Labor Code § 226.7 are
26 synonymous, and therefore, just as bonuses and other remuneration must be incorporated into the
27 "regular rate of pay" when calculating overtime pay, they must also be incorporated into the
28 "regular rate of compensation" when calculating meal and rest period premiums under Labor

Code § 226.7. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 862 (2021) (holding “that the terms are synonymous: ‘regular rate of compensation’ under section 226.7(c), like ‘regular rate of pay’ under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.”) When paying meal period premiums, which were denoted as “Meal Penalty” on wage statements, Defendants have failed to incorporate bonuses and other pay that may not be excluded from the regular rate (those forms of pay are hereinafter collectively referred to as “Incentive Pay”) and have thereby underpaid Plaintiff and other non-exempt employees their meal period premium wages. For example, throughout Plaintiff’s employment he was paid production bonuses coded as “Opr Bonus” and also was paid meal period premiums, but Defendants generally paid Plaintiff’s meal period premiums at his *base* rate of pay, and failed to incorporate the bonuses earned by Plaintiff in the meal period premiums. On information and belief, “Opr Bonus” was a quarterly bonus paid to Plaintiff and other non-exempt employees based on employees meeting objective production or performance criteria. As such, these bonuses should have been incorporated retroactively into the regular rate of compensation for the time period in which they were earned, and incorporated into the calculation of meal period premiums. Defendants failed to do so. As a result of Defendants’ failure to incorporate Incentive Pay into the regular rate of compensation, Plaintiff and other non-exempt employees have been underpaid their meal period premiums under Labor Code § 226.7.

12. Defendants have also failed to authorize and permit all rest periods to which Plaintiff and other non-exempt employees have been entitled. Specifically, the workload placed upon Plaintiff and other non-exempt employees sometimes prevented them from taking an off-duty, 10-minute rest period for each work period of 4 hours or major fraction thereof. Plaintiff’s and other non-exempt employees’ rest periods were also interrupted, rendering them less than 10 minutes of net rest time. Despite failing to authorize and permit legally compliant rest periods to Plaintiff and other non-exempt employees, Defendants failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to authorize and permit a legally compliant rest period.

13. As a result of Defendants' failure to pay for all hours worked, as well as its failure to properly pay all meal and rest period premium wages owed, Defendants have issued inaccurate wage statements to Plaintiff and other non-exempt employees.

14. As a further result of Defendants' failure to pay all earned wages (including but not limited to minimum wages), as well as Defendants' failure to properly pay meal and rest period premium wages at Plaintiff's regular rate of compensation, Defendants failed to pay all wages owed to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

CLASS ACTION ALLEGATIONS

15. Class Definitions¹: Plaintiff bring this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

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

ii. The Meal Period Premium Underpayment Class consists of all of Defendants' current and former non-exempt employees in California who received a meal period premium and also received Incentive Pay in a corresponding quarter or pay period, at any time from four years immediately preceding the filing of this action through the present.

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

iv. The Wage Statement Class consists of all members of the Minimum Wage Class, Meal Period Premium Underpayment Class, and/or Rest Period Class who received a wage statement at any time from one year immediately preceding the filing of this lawsuit through the present.

¹ A prior class action settlement in *Ferdinand Batin, et al. v. McGee Air Services, Inc., et al*, Santa Clara Superior Court Case No. 19CV347733, resolved the Labor Code violations alleged herein through February 6, 2021. Thus, for those class members who were Participating Class Members in *Batin*, the putative class period begins on February 7, 2021.

v. The Waiting Time Class consists of all formerly-employed members of the Minimum Wage Class, Meal Period Premium Underpayment Class, and/or Rest Period Class whose employment with Defendants ended at any time from three years immediately preceding the filing of this lawsuit through the present.

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

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

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

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, wage statement, meal period premium payment, and rest period policies/practices. As such, the

common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** Plaintiff's claims are typical of the Classes' claims because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff, like Class members, has been deprived of all earned wages, has been subject to Defendants' meal period premium and rest period policies/practices, has been furnished inaccurate wage statements, and was not paid all wages owed at termination.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the members of the Classes. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer

1 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
2 employment. Further, the prosecution of separate actions by the individual class members, even
3 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
4 with respect to the individual class members against Defendants herein; and which would
5 establish potentially incompatible standards of conduct for Defendants; and/or legal
6 determinations with respect to individual class members which would, as a practical matter, be
7 dispositive of the interest of the other class members not parties to adjudications or which would
8 substantially impair or impede the ability of the class members to protect their interests. Further,
9 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
10 individual prosecution considering all of the concomitant costs and expenses attending thereto.
11 As such, the Classes identified in Paragraph 15 are maintainable under Code Civ. Proc. § 382 of
12 the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **MINIMUM WAGE VIOLATIONS**

15 **(AGAINST ALL DEFENDANTS)**

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

17 23. Wage Order 9, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of
18 employees to be paid minimum wages for all hours worked in amounts set by state law. Labor
19 Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
20 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
21 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
22 wages and interest accrued thereon. As alleged herein, Defendants have failed to conform their
23 pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum Wage
24 Class for all hours worked including, but not limited to, all hours they were subject to the control
25 of Defendants and/or suffered or permitted to work under the Labor Code and Wage Order 9.

26 24. Labor Code § 1198 makes unlawful the employment of an employee under
27 conditions that the IWC prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide that an employer
28 who has failed to pay its employees the legal minimum wage is liable to pay those employees the

1 balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due,
2 and interest thereon.

3 25. As a direct and proximate result of Defendants' unlawful conduct as alleged
4 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
5 not limited to unpaid wages and interest, in an amount to be established at trial, and they are
6 entitled to recover economic and statutory damages and penalties and other appropriate relief as
7 a result of Defendants' violations of the Labor Code and Wage Order 9.

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

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE OF**
15 **COMPENSATION**
16 **(AGAINST ALL DEFENDANTS)**

17 27. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

18 28. At all relevant times, Defendants have been required to pay meal period premiums
19 at employees' "regular rate of compensation" pursuant to Labor Code § 226.7. "Regular rate of
20 compensation" is synonymous with "regular of pay" as used in Labor Code § 510. Thus, meal
21 period premiums must be calculated in the same manner as the "regular rate of pay" is calculated
22 for overtime purposes, and must incorporate the value of Incentive Pay.

23 29. As alleged herein, Defendants failed to incorporate the value of Incentive Pay, and
24 otherwise failed to accurately calculate the regular rate of compensation, when calculating meal
25 period premiums for Plaintiff and members of the Meal Period Premium Underpayment Class,
26 and thus underpaid Plaintiff and members of the Meal Period Premium Underpayment Class for
27 their meal period premium wages due under Labor Code § 226.7.

28 ///

30. As a result of the foregoing, Plaintiff and members of the Meal Period Premium Underpayment Class are entitled to the amount of underpayment of meal period premium wages, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

32. Labor Code §§ 226.7 and 516, and Wage Order 9, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

33. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally mandated rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

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

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, have failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that

1 included, among other requirements, all wages earned, all meal and rest period premium wages
2 earned, total hours worked, and total hours worked at each rate of pay, in violation of Labor Code
3 § 226.

4 37. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
5 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
6 *inter alia*, the non-payment of all their minimum wages and meal and rest period premium wages,
7 reported inaccurate information regarding actual hours worked, and deprived them of the
8 information necessary to identify the discrepancies in Defendants' reported data.

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

13 **FIFTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

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

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

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

27 42. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
28 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members

of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

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

45. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all wages due, failing to provide meal periods or pay meal period premiums, failure to authorize and permit rest periods or pay rest period premiums, and failing to furnish accurate and complete itemized wage statements in violation of Labor Code § 226.

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

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

48. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

///

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

6 **SEVENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

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

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

- 26 a. Failing to pay Plaintiff and other aggrieved employees at least the statutory
27 minimum wage for all hours worked, in violation of Labor Code §§ 204, 558,
28 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198;

- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198; and
- e. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203.

52. On or about January 24, 2023, Plaintiff notified Defendant McGee Air Services Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the California Labor Code identified in paragraph 51 (a)-(e) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

- 1 1. For an order certifying the proposed Classes;
- 2 2. For an order appointing Plaintiff as representative of the Classes;
- 3 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 4 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
5 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
6 1197;
- 7 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
- 9 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
10 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
- 11 7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code §
12 226, *et seq.*;
- 13 8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to
14 Labor Code §§ 201-203;
- 15 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
16 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
17 practices declared by this Court to be in violation of Business and Professions Code § 17200, *et*
18 *seq.*;
- 19 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
20 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
21 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay
22 each employee and \$200.00 for each subsequent violation or willful or intentional violation
23 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
24 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
25 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
26 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
27 pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each
28 subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)

\$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §§ 218.6, 1194(a); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

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

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

Date: March 30, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: _____


Tuvia Korobkin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: March 30, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: _____


Tuvia Korobkin
Attorneys for Plaintiff