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10 on behalf of himself and similarly situated employees

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County of Alameda
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12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 GUTHRIE SIEGMAN, individually and as)
15 an aggrieved employee pursuant to the)
16 Private Attorneys General Act (PAGA),)

17 Plaintiff,)

18 vs.)

19 MARIO ORTIZ;)
20 JMR CONCESSIONS, INC.; Does 1)
21 through 20, inclusive,)

22 Defendants.)
23)
24)
25)
26)

Case No. **23CV030280**

COMPLAINT FOR DAMAGES:

1. Retaliation in Violation of Labor Code § 1102.5;
2. Willful Misclassification of Workers;
3. Failure to Keep Accurate Records;
4. Failure to Provide Accurate Wage Statements;
5. Failure to Provide Meal and Rest Breaks;
6. Failure to Reimburse Expenses;
7. Failure to Pay Minimum Wage;
8. Failure to Timely Pay Wages;
9. Failure to Pay Final Wages;
10. Unfair Competition;
11. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.

JURY TRIAL DEMANDED

1 Plaintiff GUTHRIE SIEGMAN (“Siegman” or “Plaintiff”), on behalf of himself and all other
2 similarly situated employees, hereby files this Complaint against Defendants MARIO ORTIZ, JMR
3 CONCESSIONS, and Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff alleges
4 the following:

5 **INTRODUCTION**

6 1. Defendant Mario Ortiz (“Ortiz”) operates a concessions business, doing business in
7 Alameda County and other locations.

8 2. Ortiz contracts with stadiums and other venues throughout California to supply
9 concession services for events, including providing both the workers who staff concession stands
10 and the workers, called “vendors” or “hawkers,” who walk through the crowds selling concessions
11 directly to the audience in their seats. Ortiz conducts business both in his own name and through a
12 business entity he controls, Defendant JMR Concessions (“JMR”).

13 3. Defendant JMR Concessions is a business entity of unknown kind, doing business in
14 Alameda County and other locations.

15 4. Plaintiff Guthrie Siegman (“Siegman” or “Plaintiff”) worked as vendor for
16 Defendants from approximately 2017 until approximately October 2022.

17 5. Defendants improperly treated Siegman, and all similarly situated workers, as
18 independent contractors. This was a willful act of misclassification. Siegman, and similarly situated
19 workers, were in fact Defendants’ employees under California Law, including as codified by the
20 amendments to the California Labor Code enacted by California Assembly Bill 5 (“AB 5”) of 2019.
21 *See also Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 416 P.3d 1 (2018).

22 6. Defendants kept Siegman, and all of their workers, “off the books.” Defendants did
23 not track their employees’ hours and did not report their employees’ wages to any tax authority,
24 either on Forms W2 or on Forms 1099. Defendants never issued Siegman, nor any of their
25 concessions workers, any wage statements. Defendants always paid Siegman, and all of their
26 workers, in cash at the end of each day—and often Defendants paid less than was owed.
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7. On at least two occasions, Siegman objected to Defendants' pay practices. After the second such time, Defendant Ortiz told Siegman that, if he didn't like Defendants' practices, "Don't come back." Siegman had been fired in retaliation for his objections.

8. This complaint is brought by Plaintiff seeking both individual damages and PAGA penalties for Defendants' practices of (i) improperly classifying employees as independent contractors, (ii) failing to keep accurate time records, (iii) failing to provide accurate wage statements, (iv) illegally deducting monies from their employees' wages, (v) failing to provide appropriate meal or rest periods, (vi) failing to reimburse employee expenses, (vii) failing to pay the minimum wage, (viii) failing to timely pay wages, and (ix) failing to timely pay final wages.

9. Plaintiff also seeks damages for his illegal and retaliatory termination following complaints that he made to Defendants regarding Defendants' pay practices.

JURISDICTION AND VENUE

10. The Alameda County Superior Court has jurisdiction in this matter because the action concerns violations of California Labor Code and Business and Professions Code as enumerated below.

11. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of the wrongful acts and violations of law asserted herein occurred within Alameda County.

PARTIES

12. Plaintiff Guthrie Siegman is over the age of eighteen (18), is a resident of the State of California and is a former employee of Defendants.

13. Defendant Mario Ortiz conducts business in his own name providing concessions services at stadiums and other venues in California, including California Memorial Stadium and the Alameda County Fairgrounds in Alameda County, and Stanford Stadium and Paypal Park in Santa Clara County.

14. Plaintiff is informed and believes, and thereupon alleges, that Defendant JMR Concessions is an unincorporated business owned and operated by Defendant Ortiz, and that Defendant Ortiz has conducted business under JMR's name, providing concessions services at stadiums and other venues in California, including California Memorial Stadium and the Alameda

1 County Fairgrounds in Alameda County, and Stanford Stadium and Paypal Park in Santa Clara
2 County.

3 15. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
4 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
5 employees.

6 16. Defendants proximately caused Siegman and similarly situated employees to be
7 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
8 Complaint.

9 17. Plaintiff is further informed and believes, and thereon alleges, that each of the
10 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
11 joint venturer of the remaining Defendants and was acting within the course and scope of that
12 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
13 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
14 remaining Defendants. The true names and capacities of the Defendants named herein Does 1
15 through 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to
16 Plaintiff, who therefore sues such Defendants by fictitious names pursuant to California Code of
17 Civil Procedure section 474. Plaintiff will amend this complaint to show such true names and
18 capacities of Does 1 through 20, inclusive, when they have been determined.

19 18. On January 19, 2023, Plaintiff filed his Labor Code § 2699.3 Private Attorney
20 General Act (“PAGA”) notice with the California Labor & Workforce Development Agency
21 (“LWDA”).

22 19. As of March 28, 2023, the LWDA had not responded to the PAGA Notice, thus
23 Plaintiff is deputized to seek civil penalties on behalf of the State of California and all aggrieved
24 employees.

25 **GENERAL ALLEGATIONS**

26 20. Defendants operate a concessions business.

27 21. Defendants contract with stadiums and other venues throughout California to supply
28 concession services for events, including providing both the workers who staff concession stands

1 and the workers called “vendors” (or “hawkers”) who walk through the crowds selling concessions
2 directly to the audience in their seats.

3 22. At a typical event, individuals employed by Defendants to work at concessions
4 stands might sell lemonade, soda, hotdogs, churros, pretzels, nachos, cotton candy, popcorn,
5 packaged snacks and candies, and ice cream novelties such as snow cones.

6 23. At a typical event, individuals employed by Defendants to work as vendors would
7 sell the same items, except for nachos, which are difficult to sell by hand.

8 24. Defendants also employ workers who are not directly involved in selling concessions,
9 but who prepare the food and beverages sold by the Defendants’ other employees.

10 25. Defendants have contracted to provide concessions services to Levy Restaurants,
11 which manages events at California Memorial Stadium; to Stanford Dining, which manages
12 events at Stanford Stadium; and to Spectra, which manages events at Paypal Park.

13 26. Siegman worked as vendor for Defendants from about 2017 until about October
14 2022. In the twelve months preceding Siegman’s filing of his PAGA notice with LWDA,
15 Defendants employed Siegman to perform work as a vendor at California Memorial Stadium and
16 at the Alameda County Fairgrounds (both in Alameda County), and at Stanford Stadium and
17 Paypal Park (both in Santa Clara County).

18 27. Siegman and similarly situated employees of Defendants would typically arrive to
19 work at least 30 minutes prior to the time they could commence selling concessions, and often
20 more than 30 minutes prior. For example, if game time was 12:00pm, an individual employed by
21 Defendants as a vendor might want to be in the stands selling concessions as early as about
22 11:15am, and might arrive as early as 10:00am or 10:30am, to check in with Defendant Ortiz,
23 and to pick up uniforms, equipment and inventory, including: the shirt and hat that Defendants
24 required their workers to wear; the “tub” (owned by Defendants) that a vendor carries over his or
25 her shoulders to hold concessions; the card reader (owned by Defendants) that a vendor uses to
26 make electronic sales; and the actual food and beverages (supplied by Defendants) that would be
27 sold that day.

1 28. Siegman and similarly situated employees of Defendants who worked as vendors
2 would then circulate through the venue, making sales to members of the crowd. From time to
3 time, vendors would return to Defendants' stockroom to refill their tubs with inventory.

4 29. Siegman and similarly situated employees of Defendants who worked at fixed
5 concessions stands would staff Defendants' stands throughout an event, making sales to members
6 of the crowd who left their seats to buy concessions.

7 30. Siegman and similarly situated employees of Defendants who prepared food for
8 sale would work in kitchens controlled by Defendants, performing such tasks as cooking
9 hotdogs, wrapping churros, making lemonade, and making snow cones.

10 31. Defendants made no provision for Siegman or similarly situated employees to
11 take any meal breaks or rest periods during events. Siegman and similarly situated employees
12 frequently worked for four, five or six hours without any rest or meal break of any kind.

13 32. Defendants did not pay Siegman or similarly situated employees any
14 compensation for missed meal breaks or rest periods.

15 33. Defendants made no provision for reimbursing Siegman or similarly situated
16 employees for expenses incurred in the course of their work for Defendants. Defendants
17 expected Siegman and similarly situated employees to use their personal cell phones to conduct
18 business with Defendants; for example, before events there would be phone calls about details
19 about locations, parking, and obtaining parking passes, and during events there would be phone
20 calls in the case of an emergency. But Defendants never reimbursed Siegman or similarly
21 situated employees for their telephone expenses.

22 34. Siegman and similarly situated employees of Defendants were subject to the
23 direction and control of Defendants.

- 24 a. Siegman and similarly situated employees could only perform work as
25 vendors at the times that Defendants specified. For example, vendors were not
26 allowed to commence selling concessions until Defendants permitted them to
27 do so, and they had to cease selling concessions when Defendants told them to
28

1 do so; and employees who worked inside concessions stands or doing food
2 preparation could not work outside the hours specified by Defendants.

- 3 b. Siegman and similarly situated employees could only perform work as
4 vendors at the locations that Defendants specified. While restrictions varied
5 from venue to venue, vendors were not allowed to sell concessions in the
6 premium seating areas, nor in the parking lots of venues, nor in certain areas
7 around the entrances and exits from venues, nor on the concourses, and
8 employees who worked in concessions stands or doing food preparation had to
9 work at the stations specified by Defendants.
- 10 c. Siegman and similarly situated employees had to conduct business in the
11 manner that Defendants specified: Defendants exerted total control over what
12 items vendors and concessions stands workers would be permitted to sell;
13 Defendants were the only source from which vendors and concession stand
14 workers were allowed to obtain those items; Defendants set the prices at which
15 vendors and concessions stand workers had to offer those items for sale;
16 Defendants determined the means by which vendors and concession stands
17 workers could accept payment (*i.e.* electronic sales only, or cash sales). As for
18 Defendants' employees who did food preparation, they had to prepare the
19 foods Defendants told them to, because Defendant controlled the entire menu.
- 20 d. Siegman and similarly situated employees had to wear a uniform: black shoes,
21 black pants, and a shirt and hat (orange or lime green, with a vendor number)
22 issued by and owned by Defendants. Defendants could even control how
23 employees wore Defendants' shirts; workers were not allowed to tie the shirts
24 off to expose their midriffs, for example, nor to wear the shirts untucked.
- 25 e. Siegman and similarly situated employees were subject to discipline by the
26 Defendants, and could be excluded from a venue or fired if they transgressed.
27 For example, Siegman and similarly situated employees could be disciplined if
28

1 Defendants were displeased with how they interacted with audience members
2 or fellow employees.

3 35. The work that Siegman and similarly situated employees of Defendants performed
4 was work in the usual course of Defendants' business. Defendants are in the business of selling
5 concessions at games and other events held at stadiums and other venues. Mr. Siegman and
6 similarly situated employees' jobs were to sell concessions at games and other events held at
7 stadiums and other venues.

8 36. Siegman and similarly situated employees of Defendants were not practicing an
9 independently established trade:

- 10 a. Siegman and similarly situated employees of Defendants did not operate their
11 own, independent businesses.
- 12 b. Siegman and similarly situated employees of Defendants did not own their
13 own equipment.
- 14 c. Siegman and similarly situated employees of Defendants could not
15 subcontract their responsibilities.
- 16 d. Siegman and similarly situated employees of Defendants did not advertise or
17 market their services.
- 18 e. Siegman and similarly situated employees of Defendants did not run any risk
19 of suffering an economic loss when they arrived for a day of work, because
20 they did not have to put up any capital (other than unreimbursed expenses) to
21 perform a day of work.

22 37. Because Defendants had misclassified Siegman and similarly situated employees
23 as "independent contractors," and because Defendants paid Claimant and similarly situated
24 employees in cash, Defendants failed to withhold appropriate taxes, including unemployment
25 insurance, income tax, Social Security, and other taxes, from Claimant and similarly situated
26 employees' pay.

27 38. Defendants paid Siegman and similarly situated employees who worked as
28 vendors exclusively on a commission basis.

1 39. Specifically, Defendants paid Siegman and similarly situated employees who
2 worked as vendors a percentage of their sales, with the percentage sometimes varying by item.
3 For example, a vendor at a given event might be paid as a commission 20% of all sales except for
4 sales of alcoholic beverages, plus 10% of all sales of alcoholic beverages.

5 40. At the end of an event, Siegman and similarly situated employees who worked as
6 vendors would conduct a reconciliation with Defendant Ortiz. Ortiz kept records of how much
7 inventory a given vendor had taken over the course of an event, and had records of how many
8 sales had been conducted on the card reader assigned to that vendor. Ortiz and the vendor would
9 reconcile the vendor's inventory and sales, and Ortiz would then determine how much the vendor
10 had earned in commissions.

11 41. Plaintiff is further informed and believes, and thereon alleges, that Defendants had
12 a practice of deducting any shorts from a vendor's wages. So, if Defendant Ortiz concluded,
13 after conducting his reconciliation, that a given vendor's inventory was \$50 short, Defendants
14 would attempt to deduct \$50 from that vendor's commissions from the day, even if the shortage
15 occurred through no fault of the vendor.

16 42. Plaintiff is further informed and believes, and thereon alleges, that beginning in
17 2022 Defendants had a practice of deducting money from vendor's tips to fund a so-called "tip
18 pool." Plaintiff is further informed and believes, and thereon alleges, that some monies in the tip
19 pool were paid to back-of-the-house individuals who were outside the chain of service and who
20 were not entitled to receive tips.

21 43. The process of reconciling inventory and revenue at the end of a workday
22 typically lasted about 30 to 60 minutes for a vendor, depending how many other vendors were
23 checking out at the same time.

24 44. Siegman and similarly situated employees who worked as vendors were not paid
25 for time during which they were required to work, but were unable to earn commissions. For
26 example, and without limitation, they were not paid for the 30 to 60 minutes (or more) of time
27 spent checking in before events, nor for the 30 to 60 minutes (or more) of time reconciling and
28 closing out at the end of events.

1 45. Claimant and similarly situated employees who worked as vendors were also not
2 paid for time spent on any breaks they managed to take despite Defendants' pattern and practice
3 of not providing breaks.

4 46. Defendants paid Siegman and similarly situated employees who worked at
5 concessions stands or in food prep on an hourly basis.

6 47. Defendants paid all of their employees, including Siegman, in cash at the end of
7 the day.

8 48. Defendants often paid their employees, including Siegman, less than the wages
9 they were owed, including without limitation: because Defendants did not pay vendors for time
10 when they worked but did not earn commissions; because Defendants improperly deducted cash
11 shortages and tip pool expenses from vendors' commissions; because Defendants did not pay
12 premium wages for missed meal breaks and rest periods; because Defendants did not reimburse
13 expenses; and because Defendants misclassified employees as independent contractors and failed
14 to pay, *inter alia*, Defendants' portion of Social Security and other payroll taxes.

15 49. Because Defendants did not pay their employees, including Siegman, all wages
16 owing, Defendants failed to timely pay all wages; wages that are *never* paid are, by definition,
17 untimely.

18 50. Because Defendants did not pay their employees, including Siegman, all wages
19 owing, Defendants failed to timely pay final wages; final wages that are *never* paid are, by
20 definition, untimely.

21 51. Defendants never provided Siegman nor similarly situated employees with any
22 wage statements.

23 52. Defendants never reported wages paid to Siegman and similarly situated
24 employees to any tax authority, whether via a Form W2, a Form 1099, or otherwise.

25 53. Plaintiff is further informed and believes, and thereon alleges, that Defendants
26 have maintained no records of the hours worked by their employees.
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1 54. In addition to the above-listed ongoing wage and hour violations Siegman
2 suffered, he was also illegally retaliated against when he complained about Defendants' labor
3 practices.

4 55. Siegman informed Defendants that he believed: (i) that Defendants were
5 improperly deducting monies from vendors' wages to cover alleged shortages in vendors' cash at
6 the end of events; and (ii) that Defendants were implementing their tip pool improperly by
7 paying monies from the tip pool to individuals outside the "chain of service."

8 56. First, in the summer of 2022, at a jaripeo at the Alameda County Fairgrounds,
9 Ortiz attempted to deduct a shortage from Siegman's commissions. Ortiz claimed that Siegman
10 was about \$300 short and attempted to pay Siegman \$300 less than he was owed in commissions.

11 57. Ortiz claimed that his policy of deducing shortages was made clear to all workers
12 in Spanish at the beginning of the day; Siegman objected that he had not heard the policy. Ortiz,
13 however, stood his ground and deducted about \$300 from what Siegman was owed.

14 58. Later that same week, Siegman arranged to meet Ortiz at Ortiz's house in
15 Pacifica to return some equipment. At Ortiz's house, Siegman informed Ortiz that his policy of
16 deducting shorts from workers' wages was illegal. Ortiz relented and gave Siegman cash (albeit
17 less than was owed) to compensate Siegman for the unpaid commissions from the jaripeo.

18 59. Second, in late summer 2022, around the start of football season, Ortiz began
19 attempting to deduct money from the tips paid via credit card readers to Siegman and other
20 vendors. Ortiz said the deducted money was being used to fund a tip-pool.

21 60. At a football game at Memorial Stadium in about October 2022, Siegman objected
22 to the tip pool deductions; in particular, Siegman believed that the tip pool was being shared
23 improperly with back-of-the-house workers who were outside the chain of service. Ortiz told
24 Siegman, "Your services are no longer needed, don't come back." Later in the week, Ortiz
25 confirmed that Siegman would not be permitted to return to work.

26 61. Defendants terminated Siegman's employment because Siegman had complained
27 about Defendants' payroll practices.

28

1 62. Defendants' conduct, as alleged above, was willful. Defendants knew they were
2 flouting both federal and state wage-and-hour laws and tax requirements. Such conduct shows
3 Defendants' willful refusal to abide by the law, including California Labor Code.

4 63. At all times herein set forth, PAGA provided that any provision of law under the
5 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
6 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order
7 may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
8 themselves and other current or former employees pursuant to procedures outlined in California
9 Labor Code section 2699.3.

10 64. PAGA defines an aggrieved employee in Labor Code section 2699(c) as "any person
11 who was employed by the alleged violator and against whom one or more of the alleged violations
12 was committed."

13 65. Siegman, and all other current and former employees of Defendant, were the victims
14 of one of more of the above alleged violations.

15
16 **FIRST CAUSE OF ACTION**
17 **(Retaliation in Violation of Labor Code section 1102.5)**

18 66. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
19 through 65 of this Complaint as if fully set forth herein.

20 67. California Labor Code § 1102.5 prohibits retaliation against an employee for
21 disclosing information to a person with authority over the employee, where the employee has
22 reasonable cause to believe that the information discloses a violation of state or federal statute or
23 a violation or noncompliance with a state or federal rule or regulation. Labor Code § 1102.5
24 further prohibits retaliation against an employee for refusing to participate in an activity that
25 would result in a violation of state or federal statute or a violation or noncompliance with a state
26 or federal rule or regulation.

27 68. Siegman informed Defendants as to his concerns that (i) Defendants were
28 improperly deducting monies from vendors' wages to cover alleged shortages in vendors' cash at

1 the end of events, and (ii) that Defendants were implementing their tip pool improperly by
2 including individuals outside the “chain of service.”

3 69. Siegman believed these actions constituted a violation of the California Labor
4 Code.

5 70. Because Siegman complained, Defendants terminated Siegman’s employment.

6 71. As a direct, foreseeable, and proximate result of Defendants’ retaliatory actions,
7 Siegman has suffered and continues to suffer substantial losses in earnings and job benefits, all to
8 his damage herein in an amount not less than the minimal jurisdiction amount of this court, the
9 amount of which will be established at trial.

10 72. As a direct, foreseeable, and proximate result of Defendants’ unlawful actions,
11 Siegman has suffered emotional distress, humiliation, shame, and embarrassment, in an amount
12 to be established at trial.

13
14 **SECOND CAUSE OF ACTION**
15 **(Willful Misclassification)**

16 73. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
17 through 72 of this Complaint as if fully set forth herein.

18 74. According to Labor Code section 226.8, it is a violation of law for any person or
19 employer to willfully misclassify an individual as an independent contractor.

20 75. As described above, Defendants willfully misclassified Siegman as an
21 independent contractor in violation of the Labor Code.

22 76. Defendants’ conduct was willful. Defendants knew that Siegman was not an
23 independent contractor. Indeed, Defendants made no show of attempting to comply with the law.

24 77. As a proximate result of the Defendants’ conduct, Siegman has been damaged,
25 including without limitation by Defendants’ failure to make proper contributions to Social
26 Security, unemployment and worker’s compensation insurance on behalf of Siegman.

27 78. Siegman is entitled to compensation, including under Labor Code 226.8, in an
28 amount to be determined at trial.

THIRD CAUSE OF ACTION
(Failure to Keep Accurate Time Records)

79. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1 through 78 of this Complaint as if fully set forth herein.

80. Labor Code section 1174(d) requires employers to keep “payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.”

81. As described above, Defendants did not keep accurate information regarding all hours worked by and wages paid to Siegman.

82. Defendants’ conduct was willful. Defendants knew they were not keeping any time records. Indeed, Defendants made no show of attempting to comply with the law.

83. As a proximate result of the Defendants’ conduct, Siegman has been damaged and is entitled to damages under Labor Code 1174.5 in an amount to be established at trial.

FOURTH CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements)

84. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1 through 83 of this Complaint as if fully set forth herein

85. According to Labor Code section 226(a), an employer must provide a specified and itemized statement to an employee, semi-monthly or at the time of each payment of wages.

86. As described above, Defendants intentionally and knowingly failed to provide any such itemized statements to Siegman at any time.

87. Defendants’ conduct was willful. Defendants knew that they were not providing wage statements. Indeed, Defendants made no show of attempting to comply with the law.

88. California Labor Code section 226(e) provides that “[a]n employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement,” and provides that “An employee suffering injury as a result of a knowing and intentional failure

1 by an employer to comply with subdivision (a) is entitled to recover the greater of all actual
2 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
3 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
4 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
5 reasonable attorney's fees."

6 89. As a proximate result of the Defendants' conduct, Siegman has been damaged and
7 thereby seeks all damages due under California Labor Code section 226(e), in an amount to be
8 established at trial.

9 **FIFTH CAUSE OF ACTION**
10 **(Failure to Provide Meal Periods and Rest Periods)**

11 90. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
12 through 89 of this Complaint as if fully set forth herein.

13 91. Labor Code section 226.7 and IWC Wage Order No. 10-2001, section 11(A)
14 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours
15 worked.

16 92. Labor Code section 226.7 and IWC Wage Order No. 10-2001, section 12(A)
17 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four
18 (4) hours or major fraction thereof worked.

19 93. As described above, Defendants failed to provide Siegman with legally compliant
20 meal periods or rest periods pursuant to California law.

21 94. As described above, Defendants failed to pay meal period premiums at one hour
22 of pay at Siegman's regular rate of pay for their failure to provide meal periods.

23 95. Defendants' conduct was willful. Defendants knew that Siegman had not been
24 provided with meal or rest breaks, nor paid for missed breaks. Indeed, Defendants made no show
25 of attempting to comply with the law.

26 96. As a proximate result of the Defendants' conduct, Siegman has been damaged and
27 deprived of premium wages for meal breaks and rest breaks and thereby seeks all premium
28 wages due in an amount to be established at trial.

SIXTH CAUSE OF ACTION
(Failure to Reimburse Expenses)

97. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1 through 96 of this Complaint as if fully set forth herein.

98. Labor Code section 2802(a) states that, “An 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

99. As described above, Defendants failed to pay required reimbursements to Siegman in violation of the Labor Code, including, without limitation, failing to reimburse Siegman’s use of his personal cell phone to conduct business with and on behalf of Defendants.

100. Defendants’ conduct was willful. Defendants knew that Siegman was not compensated for expenses he incurred on behalf of Defendants, including telephone expenses. Indeed, Defendants made no show of attempting to comply with the law.

101. As a proximate result of the Defendants’ conduct, Siegman has been damaged and deprived of reimbursements and thereby seeks reimbursement of all unreimbursed costs and expenses in an amount to be established at trial.

SEVENTH CAUSE OF ACTION
(Failure to Pay Minimum Wage for All Hours Worked)

102. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1 through 101 of this Complaint as if fully set forth herein.

103. Defendants were required to compensate Siegman with at least the State’s minimum wage for all hours worked. See Cal. Labor Code § 1194; MW-2017; MW-2019, MW-2021; MW-2022.

104. Specifically, and as described above, Defendants did not provide Siegman with any compensation for time during which Siegman was required to work but did not earn commissions, for example and without limitation the 30- to 60-minute (or longer) periods at the

1 start and end of events when Siegman checked in and out before and after commencing sales as a
2 vendor.

3 105. Defendants' conduct was willful. Defendants knew that Siegman earned no
4 income for time spent waiting at the start and end of shifts. Indeed, Defendants made no show of
5 attempting to comply with the law.

6 106. Defendants' conduct described herein violates California Labor Code section
7 1194 and associated Wage Orders.

8 107. As a proximate result of Defendants' conduct, Siegman has been damaged and
9 deprived of minimum wages, in an amount to be established at trial. Siegman now seeks these
10 wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and
11 costs, and interest pursuant to California Labor Code section 1194.

12 **EIGHTH CAUSE OF ACTION**
13 **(Failure to Timely Pay Wages)**

14 108. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
15 through 107 of this Complaint as if fully set forth herein.

16 109. Labor Code section 201.3 requires employers of temporary services workers to
17 pay all wages due and payable, including tips, at the end of each day.

18 110. As described above, Defendants did not pay Siegman all wages owed at the end of
19 each day. Specifically, and without limitation, Siegman did not receive all meal and rest period
20 premium wages at the end of each day.

21 111. Defendants' conduct was willful. Defendants knew that Siegman had not been
22 provided with meal or rest breaks, nor paid for missed breaks. Indeed, Defendants made no show
23 of attempting to comply with the law.

24 112. As a proximate result of the Defendants' conduct, Siegman has been damaged and
25 deprived of his wages and seeks his unpaid wages, plus all penalties due under the Labor Code,
26 including without limitation section 210, in an amount to be established at trial.

27 **NINTH CAUSE OF ACTION**
28 **(Failure to Pay Final Wages)**

1 113. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
2 through 112 of this Complaint as if fully set forth herein.

3 114. An employer must pay an employee who is terminated all unpaid wages
4 immediately upon termination. Labor Code § 201.

5 115. Under Labor Code section 203, an employer who willfully fails to pay an
6 employee final wages in accordance with Labor Code section 201 must pay the employee a
7 waiting time penalty of up to thirty (30) days his daily rate.

8 116. Defendants did not pay Siegman all wages owed at the time of termination and did
9 not pay the waiting time penalties owed. Specifically, and without limitation, Siegman did not
10 receive all meal and rest period premium wages at his termination, and Defendants never
11 remedied the omission.

12 117. Defendants' conduct was willful. Defendants knew that Siegman had not been
13 provided with meal or rest breaks, nor paid for missed breaks. Indeed, Defendants made no show
14 of attempting to comply with the law.

15 118. As a proximate result of the Defendants' conduct, Siegman has been damaged and
16 deprived of his wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
17 Defendants' failure to pay all wages due in an amount to be established at trial.

18
19 **TENTH CAUSE OF ACTION**
(Unfair Competition)

20 119. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
21 through 118 of this Complaint as if fully set forth herein.

22 120. Unfair competition shall mean and include any unlawful, unfair or fraudulent
23 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
24 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
25 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

26 121. Defendants committed numerous violations of the California Labor Code
27 throughout its employment relationships with Siegman and similarly situated employees.
28

1 122. Siegman is also informed and believes and thereon alleges that such actions and/or
2 conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and
3 Professions Code section 17200 *et seq.*), including pursuant to *Cortez v. Purolator Air Filtration*
4 *Products Co.*, 23 Cal. 4th 163 (2000).

5 123. Pursuant to the UCL (including B&P Code §17203), Siegman is entitled to
6 restitution as a result of their Defendants’ business practices, including, but not limited to, public
7 injunctive relief pursuant to B&P Code § 17203, and interest and penalties, all in an amount as
8 yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

9
10 **ELEVENTH CAUSE OF ACTION**
(Civil Penalties Pursuant to PAGA § 2698 *et seq.*)

11 124. Plaintiff hereby incorporates by reference and re-alleges paragraphs Paragraphs 1
12 through 123 of this Complaint as if fully set forth herein.

13 125. Siegman brings this cause of action as a proxy for the State of California, and in
14 this capacity seeks penalties on behalf of all aggrieved employees for Defendants’ violations of
15 the California Labor Code, including but not necessarily limited to those Labor Code violations
16 identified above.

17 126. On January 19, 2023, Siegman sent written notice to the LWDA regarding
18 Defendant’s violations of the California Labor Code, pursuant to Labor Code section 2698, *et*
19 *seq.*, PAGA. Pursuant to Labor Code section 2699.3, if the LWDA intended to investigate
20 Siegman’s PAGA claims, LWDA had sixty-five days from receipt of the written notice to inform
21 counsel for Siegman of that intention via certified mail; as of March 28, 2023, the LWDA had
22 not done so. As such, Siegman has exhausted his administrative remedies under PAGA and may
23 proceed in this Court.

24 127. Siegman is thus entitled to recover civil penalties on behalf of the State of
25 California and all aggrieved employees for all violations of the Labor Code from January 20,
26 2022, through trial on this matter.

27 128. Labor Code section 226.8 makes it a legal violation for any person or employer to
28 willfully misclassify an individual as an independent contractor. Defendants willfully

1 misclassified Siegman and similarly situated employees as independent contractors in violation
2 of the Labor Code. Thus, Defendants are subject to the various civil penalties described in
3 section 226.8.

4 129. Labor Code section 1174(d) requires employers to keep “payroll records showing
5 the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
6 accordance with rules established for this purpose by the commission, but in any case, shall be
7 kept on file for not less than three years.” Defendants did not keep accurate information
8 regarding all hours worked by and wages paid to Siegman and similarly situated employees.
9 This was in violation of the Labor Code.

10 130. Labor Code section 226 requires employers to furnish to employees with “an
11 accurate itemized statement in writing” showing *inter alia*, “(1) gross wages earned, (2) total
12 hours worked by the employee, . . . (4) all deductions, provided that all deductions made on
13 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
14 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
15 and only the last four digits of his or her Social Security number or an employee identification
16 number other than a Social Security number, (8) the name and address of the legal entity that is
17 the employer . . . and (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee . . .” Defendants
19 failed to comply with these requirements with respect to Siegman and similarly situated
20 employees in violation of the Labor Code.

21 131. IWC Wage Order No. 10-2001, section 8 provides that “No employer shall make
22 any deduction from the wage or require any reimbursement from an employee for any cash
23 shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or
24 loss is caused by a dishonest or willful act, or by the gross negligence of the employee.” Labor
25 Code § 224 similarly prohibits such deductions. For the reasons stated above, Defendants failed
26 to comply with this requirement with respect to Siegman and similarly situated employees in
27 violation of the Labor Code and the Wage Order.

1 132. Labor Code section 226.7 and IWC Wage Order No. 10-2001, section 11(A)
2 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours
3 worked. As described above, Siegman and similarly situated employees were not permitted to
4 take legally compliant meal periods pursuant to California law. Defendants also failed to pay
5 meal period premiums at one hour of pay at the employees' regular rate of pay for their failure to
6 provide meal periods.

7 133. Labor Code section 226.7 and IWC Wage Order No. 10-2001, section 12(A)
8 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four
9 (4) hours or major fraction thereof worked. As described above, Siegman and similarly situated
10 employees were not permitted to take legally compliant rest periods pursuant to California law.
11 Defendants also failed to pay rest period premiums of one hour of pay at the employees' regular
12 rate of pay for their failure to provide rest periods.

13 134. Labor Code section 2802(a) states that "[a]n employer shall indemnify his or her
14 employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
16 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
17 believed them to be unlawful." As described above, Defendants failed to pay required
18 reimbursements to Siegman and similarly situated employees for required business expenses in
19 violation of the Labor Code, notably, the use by Defendants' employees of their personal cell
20 phones to conduct business with and on behalf of Defendants.

21 135. Labor Code sections 1194 and 1197.1, as well as Wage Order No. 10-2001,
22 section § 4 requires that employers pay employees at least the State's minimum wage rate for
23 each hour that they worked for Defendants. As described above, the Defendants failed to pay
24 Siegman and similarly situated employees at least the State's applicable minimum wage in
25 violation of the Labor Code.

26 136. Labor Code section 201.3 requires employers of temporary services workers to
27 pay all wages due and payable, including tips, at the end of each day. Because Defendants failed
28 to pay Siegman and similarly situated employees all compensation due and owing, including as

described above, Defendants failed to timely pay Siegman and similarly situated employees wages, in violation of the Labor Code.

137. Labor Code sections 201–203 require that all wages, including minimum wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Siegman and similarly situated employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation of the Labor Code.

138. As described herein, Defendants, by and through their agents, violated Siegman’s and similarly situated employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein.

139. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513 (Ct. App. 2018), *reh’g denied* (June 13, 2018), *review denied* (Aug. 8, 2018), Siegman intends to seek civil penalties for all violations of the California Labor Code, whether he experienced them personally or not.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For statutory and civil penalties and liquidated damages under the California Labor Code according to proof allowed by law;
3. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney’s fees;
5. For injunctive relief;
6. For an award of prejudgment and post-judgment interest; and
7. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

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Dated: March 28, 2023

Castle Law: California Employment Counsel, PC

By:



Timothy B. Del Castillo

Benjamin Rudolph Delson

Attorneys for Plaintiff GUTHRIE SIEGMAN

1 **JURY TRIAL DEMAND**

2

3 Plaintiff hereby demands a trial by jury.

4

5 Dated: March 28, 2023

6 **Castle Law: California Employment Counsel, PC**

7

8 By:

9 

10 Timothy B. Del Castillo

11 Benjamin Rudolph Delson

12 Attorneys for Plaintiff GUTHRIE SIEGMAN

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