

Richard Kim (SBN 272184)
LAW OFFICES OF RICHARD KIM PC
6131 Orangethorpe Ave., Suite 370
Buena Park, CA 90620
Telephone: (714) 276-1122
Facsimile: (714) 276-1120
rkim@richkimlaw.com

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

EFREN LOPEZ, individually and on
behalf of all others of the public similarly
situated

Plaintiff,

v.

THE FISHEL COMPANY, a business
entity, form unknown; and DOES 1 to 50,
inclusive,

Defendants.

CLASS ACTION

Case No.: 30-2023-01305726-CU-OE-CXC
Hon. Lon F. Hurwitz
Dept. CX-103

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Failure to Pay Minimum Wage (Cal. Labor Code §§1182, 1182.12, 1194, 1194.2, 1197.1, 1199 *et seq.*; §1720; 8 Cal. Code Regs §11160(4))**
- 2. Failure to Pay Overtime and Double Time Compensation (Cal. Labor Code §510, 1194, 1198; 8 Cal. Code regs §11160(3))**
- 3. Failure to Provide Meal Periods (Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(10))**
- 4. Failure to Provide Rest Periods (Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(11))**

FIRST AMENDED CLASS ACTION COMPLAINT

5. **Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §226, 226.3; 8 Cal. Code Regs §11160(6))**
6. **Waiting Time Penalties (Cal. Labor Code §203)**
7. **Failure to Reimburse for Work-Related Expenses (Cal. Labor Code §2802, *et. seq.*; 8 Cal. Code Regs §11160(8), *et. seq.***
8. **Unfair Competition and Unlawful Business Practices (Cal. Labor Code §17200, *et. seq.*)**
9. **Failure to Furnish Payroll Records (Cal. Labor Code §§226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k))**
10. **Penalties Pursuant to the Private Attorney General Act (“PAGA”) (Cal. Labor Code §2699, *et. seq.*)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Efren Lopez (“Plaintiff”), and submits this unverified First Amended Complaint (“FAC”) as follows.

I.

INTRODUCTION

1. Plaintiff brings this action on behalf of himself, and all similarly situated individuals for (a) Failure to Pay Minimum Wages; (b) Failure to Pay Overtime and Double Time Compensation; (c) Failure to Provide Meal Periods; (d) Failure to Provide Rest Periods; (e) Failure to Provide Accurate Itemized wage Statements; (f) Waiting Time Penalties; (7) Failure to

1 Reimburse for Work-Related Expenses; (8) Unfair Competition and Unlawful Business
2 Practices; and (9) Failure to Furnish Payroll records.

3 2. All allegations in this FAC are based upon information and belief except those
4 allegations that pertain to Plaintiff named herein and his counsel. Each allegation in this FAC
5 either has evidentiary support or is likely to have evidentiary support after a reasonable
6 opportunity for further investigation and discovery.

7 **II.**

8 **JURISDICTION AND VENUE**

9 3. This Court has jurisdiction over this action pursuant to *Cal. Code Civ. Pro.*
10 §410.10

11 4. Venue is proper in this Court pursuant to *Cal. Code Civ. Pro.* §§395 and 395.5
12 because the facts and circumstances giving rise to this action as alleged occurred in the County
13 of Orange.

14 **III.**

15 **THE PARTIES**

16 **A. The Plaintiff.**

- 17 5. Plaintiff is, and at all times mentioned herein was, an individual;
- 18 a. Residing in the County of Orange, State of California;
 - 19 b. Who worked for Defendants, including DOES 1 through 50, as a non-
20 exempt employee;
 - 21 c. Who worked in excess of eight (8) hours in a workday and more than forty
22 (40) hours in a workweek, but did not receive all of minimum wages,
23 overtime, and double time compensation which he was entitled;
 - 24 d. Who did not receive uninterrupted rest breaks or meal periods;
 - 25 e. Who was not indemnified or reimbursed for all out-of-pocket expenses;

- f. Who did not receive accurate itemized wage statements;
- g. Who was not paid all wages due upon termination; and
- h. Who is a member of the Class as defined in below:

B. The Defendants.

6. Plaintiff is informed and believes, and based upon that information and belief alleges that Defendant the Fishel Company, is a business entity, form unknown, conducting business in the County of Orange, State of California, which:

- a. Failed to pay at least minimum wages (including the prevailing wage as required) for all hours worked;
- b. Failed to pay overtime and double time compensation for hours worked in excess of 9 hours in a workday and/or over forty hours in a workweek;
- c. Failed to provide uninterrupted rest periods and meal periods;
- d. Failed to indemnify or reimburse its employees for all out of pocket expenses;
- e. Failed to provide employees with accurate itemized wage statements;
- f. Failed to pay employees all wages due upon termination of their employment relationship.

IV.

THE CLASS DEFINITION

7. The members of the class (the "Class") consists of:

All persons employed by Defendant the Fishel Company and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions who work for the Fishel Company during the time period of January 31, 2019 to the present.

V.

THE CLASS ALLEGATIONS

8. The persons who comprise the Class are so numerous that joinder of all such persons is impracticable, and the disposition of their claims will benefit the parties and the Court. Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the Class that he seeks to represent. Plaintiff does not have any interests that are antagonistic to the Class that he seeks to represent. Counsel for Plaintiff are experienced, qualified, and general able to conduct complex class action litigation.

9. The Court should permit this action to be maintained as a class action pursuant to section 382 of the California Code of Civil Procedure because:

- a. The questions of law and fact common to the Class predominate over any question affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- c. The members of the Class are so numerous that it is impractical to bring all members of the Class before the Court;
- d. Plaintiff and the other Class members will not be able to obtain effective and economic legal redress unless this action is maintained as a class action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the legal and statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries that Defendant's actions have inflicted upon the class;

- 1 f. There is a community of interest in ensuring that the combined assets and
2 available insurance of Defendant is sufficient to adequately compensate the
3 members of the Class for injuries sustained;
- 4 g. Without class certification, the prosecution of separate actions by individual
5 members of the Class for the injuries sustained; would create a risk of:
- 6 i. Inconsistent or varying adjudications with respect to individual members
7 of the Class which would establish incompatible standards of conduct
8 for Defendants, and/or
- 9 ii. Adjudications with respect to the individual members which would, as
10 a practical matter, be dispositive of the interests of other members not
11 parties to the adjudications or would substantially impair or impede
12 their ability to protect their interests, including but not limited to the
13 potential for exhausting the funds available from those parties who are,
14 or may be, responsible defendants.
- 15 h. Defendant has acted or refused to act on grounds generally applicable to the
16 Class, thereby making final injunctive relief appropriate with respect to the
17 Class as a whole.

18 **VI.**

19 **FACTUAL ALLEGATIONS**

20 10. Within four years preceding the initiation of this action and ongoing, Plaintiff and
21 members of the Class were and/or are currently employed by Defendants as non-exempt
22 employees.

23 11. Plaintiff is informed and believes, and thereupon alleges that Defendant required
24 him and other members of the Class to work shifts exceeding eight (8) hours a day and/or forty
25

(40) hours but failed to compensate them with overtime and/or double compensation for all time worked in excess of eight (8) hours in a workday and/or forty (40) hours in any given workweek.

12. Plaintiff is informed and believes, and thereupon alleges, that it was Defendants' policy and practice to prohibit Plaintiff, and members of the Class, from having uninterrupted meal and rest periods. For each occurrence of these rest and meal period violations, Defendants failed to pay Plaintiff and members of the Class an hour premium payment at their regular rate of pay.

13. Plaintiff is further informed and believes, and thereupon further alleges, that Defendants' failed to provide members of the Class an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

14. Plaintiff is further informed and believes, and thereupon alleges, that Defendants failed to compensate Plaintiff, and members of the Class at the appropriate minimum wage.

15. Plaintiff is further informed and believes, and thereupon alleges, that Defendants had Plaintiff and other members of the Class work on public works projects and failed to pay the prevailing wage as required.

16. Due to Defendants failure to properly pay its employees for all hours worked, including overtime compensation, double time compensation, and meal and rest break premiums, as a derivative result Plaintiffs and members of the Class were not provided with accurate itemized wage statements, nor were they paid all wages due upon termination. In addition, because the Plaintiffs and members of the Class were not compensated for all hours worked, their paychecks did not, and do not, accurately or correctly reflect all hours worked or the corresponding rates of pay.

VII.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

1 17. On January 19, 2023, Plaintiff electronically submitted written notice to the
2 California Labor and Workforce Development Agency (the “LWDA” or “Agency”), pursuant to
3 the California Private Attorney General Act of 2004 (“PAGA”), setting forth his contentions and
4 claims on behalf of himself and on behalf of those similarly situated. Copies of this letter were
5 also mailed to Defendants named herein on January 19, 2023.

6 18. The Agency has failed to respond within 65 days, thereby exhausting Plaintiff’s
7 administrative remedies.

8 **FIRST CAUSE OF ACTION**

9 **(Failure to Pay Minimum Wage [Cal. Labor Code §§1182, 1182.12, 1194, 1194.2, 1197.1,**
10 **1199 et seq.; §1720; 8 Cal. Code Regs §11160(4), et. seq.]**

11 **(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)**

12 19. Plaintiff re-alleges and incorporates each and every allegation contained in each
13 of the preceding paragraphs in this FAC and which are fully set forth herein by reference.

14 20. California law requires the state minimum wage to be at least equal to the federal
15 minimum wage. *Cal. Labor Code* §1182(b)

16 21. Notwithstanding section 1182(b) of the California Labor Code, the minimum
17 wage may be fixed by applicable state or local law, and the payment of a lower wage than the
18 minimum so fixed is unlawful. *Cal. Labor Code* §1197.

19 22. On April 4, 2016, Governor Jerry Brown signed legislation adopting a six-step
20 increase to the state minimum wage:

21 For any employer who employees 26 or more employees, and minimum wage shall be as
22 follows: [¶]

23 (A) From January 1, 2017, to December 31, 2017, inclusive,-ten dollars and fifty
24 cents (\$10.50) per hour. [¶]

(B) From January 1, 2018, to December 31, 2018, inclusive,-eleven dollars (\$11) per hour. [¶]

(C) From January 1, 2019, to December 31, 2019, inclusive,-twelve dollars (\$12) per hour. [¶]

(D) From January 1, 2020, to December 31, 2020, inclusive,-thirteen dollars (\$13) per hour. [¶]

(E) From January 1, 2021, to December 31, 2021, inclusive,-fourteen dollars (\$14) per hour. [¶]

(F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars (\$15) per hour.

Cal. Labor Code §1182.12(1)(b), et. seq.

23. Plaintiff is informed and believes, and thereupon alleges, that within the four years preceding the initiation of this action, Defendants, including DOES 1 through 40, both individually and in the aggregate, employed 26 or more employees, including Plaintiff and members of the Class.

24. Plaintiff and class members were not compensated for all of the hours worked.

25. Defendant worked on public works projects and were required to pay all of their employees the prevailing wage under *Cal. Labor Code §1720*.

26. Defendant failed to pay Plaintiff and members of the Class the prevailing wage.

27. By virtue of Defendant's unlawful failure to pay Plaintiff and members of the Class their respective and applicable minimum wages, as alleged herein, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court, and which will be ascertained according to proof at trial.

28. By virtue of Defendant's unlawful failure to pay Plaintiff and members of the Class their respective and applicable minimum wages, as alleged herein, Plaintiff and members of the Class are entitled to recover the unpaid balance of the full amounts of the minimum wages as applicable, including interest thereon, reasonable attorneys' fees and costs of suit. *Cal Labor Code* §1194.

29. In addition, Plaintiff and the Class are “entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.” *Cal. Labor Code* §1194.2

30. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and reasonable attorneys' fees and costs pursuant to *Cal. Labor Code* §§218.5 and 1194.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime and Double Time Compensation (Cal. Labor Code §510, 1194,

1198; 8 Cal. Code regs §11160(3)]

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

31. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

32. *Cal. Labor Code* §§510, 1194, and 1198 and *Industrial Wage Order* No. 16-2001(3)(A)(1)(a), which is codified under 8 CAL. CODE REGS. § 11160(3)(A)(1)(a), as amended, provide that employees in California shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek, unless they receive additional compensation beyond their regular wages in amounts specified by law. In addition, an employer must pay double the employee's regular rate of pay for all hours worked in excess of twelfth (12) hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. 8 CAL. CODE REGS. § 11160(3)(A)(1)(b).

33. *Cal. Labor Code* §1194 provides that an employee who has not been paid overtime compensation as required by section 1198 may recover the unpaid balance of the full

1 amount of such overtime compensation, together with costs of suit, penalties, interest thereon,
2 and attorneys' fees in a civil action.

3 34. Plaintiffs and members of the Class were not compensated for all hours worked.
4 As a result, Plaintiff and members of the Class worked more than eight (8) hours in a workday,
5 and/or more than forty (40) hours in a workweek as non-exempt employee of Defendant,
6 including DOES 1 through 50, without receiving overtime or double time compensation.

7 35. At all times relevant hereto, Defendants, including DOES 1 through 50, failed to
8 pay Plaintiff or members of the Class overtime and double time compensation for the hours he
9 worked in excess of the maximum hours permissible by law as required by 8 CAL. CODE
10 REGS. §11160 and *Cal. Labor Code* §§510, 1194, and 1198.

11 36. At no time relevant hereto were Plaintiff or members of the Class exempt from
12 any wage and hour provision under California law, including without limitation, any statute, rule,
13 or regulation governing the payment of overtime compensation.

14 37. By virtue of Defendant's unlawful failure to pay additional compensation to the
15 Plaintiff and the Class for their overtime hours, they have suffered, and will continue to suffer,
16 damages in the form of unpaid overtime and double time compensation subject to proof.

17 38. Plaintiff and the Class are also entitled to seek and recover interest, penalties, and
18 reasonable attorney's fees and costs pursuant to *Cal. Labor Code* §128.5, 281.6, 1194, and *Cal.*
19 *Civil Code* §3289, *et. seq.*

20
21 **THIRD CAUSE OF ACTION**

22 **(Failure to Provide Meal Periods [Cal. Labor Code §226.7, 512; 8 Cal. Code regs**
23 **§11160(10)])**

24 **(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)**
25

39. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

40. *Cal. Labor Code* §512(a) provides that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. An employee who works no more than six (6) ours may waive the meal period by mutual consent.

41. INDUSTRIAL WAGE ORDER No. 16-2001 (11)(A), which is codified under 8 CAL. CODE REGS. § 11160(10)(A), states that an employer must relieve the employee of all work-related duties during meal breaks; otherwise, the employee will be considered to be “on duty,” which constitutes compensable time.

42. At all times mentioned herein, Government Code section §12900, *et seq.* was in full force and effect and was binding on each of Defendants. Specifically, Government Code section 12940, subdivision (h) prohibits any employer or person from discharging or otherwise discriminating against any person because that person has opposed discrimination or harassment forbidden under the California’s Fair Employment and Housing Act.

43. In addition, CAL. LAB. CODE § 226.7 provides, in relevant part, as follows:

(b) An employer shall not require an employee to work during a meal... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission . . .

(c) If an employer fails to provide an employee a meal... period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission[...], the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal... period is not provided.

44. For every instance where an employer fails to provide an employee with an uninterrupted meal period in accordance to Wage Order No. 16(10), the employer shall pay the

employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. 8 CAL. CODE REGS. § 11160(10)(F); see also CAL. LAB. CODE § 226.7(c).

45. At all relevant times hereto, Plaintiff and members of the Class regularly worked more than five-hour increments; however, at all times relevant hereto, Defendants, including DOES 1 through 50, failed to provide uninterrupted meal periods to Plaintiff and members of the Class as required by CAL. LAB. CODE §§ 226.7, 512 and 8 CAL. CODE REGS. § 11160(10), as further alleged herein.

46. By virtue of requiring Plaintiff and the Class to work through meal periods free from work duties, Defendants have intentionally and improperly denied statutorily mandated meal periods in violation of CAL. LAB. CODE §§ 226.7, 512, and 8 CAL. CODE REGS. § 11160(10). Plaintiff and the Class have suffered, and will continue to suffer, damages in the form of meal break premium payments in an amount according to proof, along with interest pursuant to section 3287 of the California Civil Code.

47. At all relevant times hereto, Defendant failed to provide an adequate supply of potable, water, soap, or other suitable cleansing agent and single use towels for handwashing as mandated by 8 CAL. CODE REGS. § 11160(10)(C)

48. Plaintiff and the Class are also entitled to seek and recover costs pursuant to *Cal. Civil Code* §1032, *et. seq.*

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods [Cal. Labor Code §226.7, 512; 8 Cal. Code regs §11160(11)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

49. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

1 54. *Cal. Labor Code* §226.7 and 8 CAL. CODE REGS. § 11160(11)(D), further
2 require that for every workday in which it fails to provide a rest period during any four-hour
3 increment, the employer must pay the employee premium at a rate of an hour's pay at the employee's
4 regular rate of pay.

5 55. Plaintiff and members of the Class regularly worked four-hour increments and were
6 not provided with statutorily mandated rest breaks during their shifts. Plaintiff and members of the
7 Class were unable to avail themselves of such breaks for various reasons, including but not limited
8 to, the pressures from their workloads and from management.

9 56. By virtue of Defendants' unlawful failure to authorize, permit, and provide rest
10 periods as required by law, Plaintiff and members of the Class have suffered, and will continue to
11 suffer, damages in the form of rest break premium payments in an amount according to proof, along
12 with interest pursuant to section 3287 of the California Civil Code.

13 57. Plaintiff and the Class are also entitled to seek and recover costs pursuant to *Cal.*
14 *Civil Code* §1032, *et. seq.*

15
16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Provide Accurate Itemized Wage Statements [Cal. Labor Code §226, 226.3; 8**

18 **Cal. Code Regs §11160(6)])**

19 **(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)**

20
21 58. Plaintiff re-alleges and incorporates herein each and every allegation contained in
22 each of the preceding paragraphs in this FAC as fully set forth herein by reference.

23 59. CAL. LAB. CODE § 226 provides that an employer shall provide its employees with
24 accurate wage statements as follows:

25 (a) Every employer shall, semimonthly or at the time of each payment of wages,
26 furnish each of his or her employees, either as a detachable part of the check, draft,

27 FIRST AMENDED CLASS ACTION COMPLAINT

1 or voucher paying the employee's wages, or separately when wages are paid by
2 personal check or cash, an accurate itemized statement in writing showing (1) gross
3 wages earned, (2) total hours worked by the employee...[,] (3) the number of piece-
4 rate units earned and any applicable piece rate if the employee is paid on a piece-rate
5 basis, (4) all deductions, provided that all deductions made on written orders of the
6 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of his or her social security number or an
9 employee identification number other than a social security number, (8) the name
10 and address of the legal entity that is the employer...[,] and (9) all applicable hourly
11 rates in effect during the pay period and the corresponding number of hours worked
12 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
13 temporary services employer as defined in Section 201.3, the rate of pay and the
14 total hours worked for each temporary services assignment At all times relevant
15 hereto, the fundamental, formally established public policy of the State of
16 California as expressed in Article I, section 8 of the California Constitution was
17 and is that employees be free from race-based and disability-based
18 discrimination and harassment in their employment.

12 60. At all times relevant herein, Defendants, including DOES 1 through 50, violated CAL.
13 LAB. CODE § 226 in that Defendants failed to properly and accurately itemize the number of hours
14 worked by Plaintiff and the Class at their effective regular rates of pay, including the effective
15 overtime rates of pay.

16 61. By failing to pay Plaintiffs and members of the Class wages for all hours worked,
17 including overtime compensation, Defendants have violated the requirement that the total hours
18 worked, and all wages earned be included in the wage statements that must be provided to the
19 Plaintiff and the Class.

20 62. Defendants willfully, knowingly, and intentionally failed to comply with CAL. LAB.
21 CODE § 226 by failing to pay minimum wages, overtime compensation for hours worked in excess
22 of forty, and by failing to provide meal breaks or paying the appropriate premium wages for missed
23 meal breaks, as required by law, thereby causing damages to Plaintiff and the Class by failing to
24 include all hours worked and wages earned in their wage statements. These damages, including but
25 not limited to costs expended calculating the true hours worked and the amount of employment

1 taxes that were not properly paid to state and federal tax authorities, are difficult to estimate.
2 Therefore, Plaintiff elects to recover penalties on behalf of themselves and on behalf of the Class
3 pursuant to CAL. LAB. CODE § 226 in an amount \$4,000 each, and reasonable attorney's fees and
4 costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

5 **SIXTH CAUSE OF ACTION**

6 **(Waiting Time Penalties [Cal. Labor Code §203])**

7 **(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through**
8 **50)**

9 63. Plaintiff re-alleges and incorporates herein each and every allegation contained
10 in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

11 64. Sections 201 and 202 of the California Labor Code require employers to pay their
12 employees all wages due immediately upon discharge, or within seventy-two hours of resigning
13 without notice.

14 65. Section 203 of the California Labor Code provides that when an employer willfully
15 fails to make a timely payment of final wages pursuant to sections 201 and 202 of the California
16 Labor Code, the employer must, as a penalty, continue to pay the employee's wages at an
17 employee's daily rate, up to thirty days.

18 66. Defendants, including DOES 1 through 50, willfully, knowingly, and intentionally
19 failed to fully compensate all wages due to Plaintiff and the Class, including minimum wages,
20 overtime, double time, and meal and rest break premiums, as further alleged herein.

21 67. Since Plaintiff and the members of the Class have yet to be fully compensated for all
22 hours worked, they are entitled to waiting time penalties in the amount of their daily rate of pay up
23 to thirty days pursuant to section 203 of the California Labor Code, in an amount according to proof,
24 and costs pursuant to CAL. CODE CIV. PROC. § 1032, *et. seq.*

25 **SEVENTH CAUSE OF ACTION**

(Failure to Reimburse for Work-Related Expenses [Cal. Labor Code §2802, et. seq.; 8 Cal. Code Regs §11160(8), et. seq.])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

68. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

69. Section 2802(a) of the California Labor Code provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”

70. In addition:

All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Id. § 2802(b). Under this section the term “necessary expenditures or losses” includes attorneys’ fees. *Id.* § 2802(c).

71. Moreover, Industrial Wage Order No. 16-2001 (8)(B), which is codified under 8 CAL. CODE REGS. § 1116, “[w]hen the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, . . .” 8 CAL. CODE REGS. § 11160(8)(B)

72. As alleged herein, Plaintiff and the Class were required to incur necessary expenditures or losses as a direct consequence of the discharge of their duties.

73.

74. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and the Class have been damaged in an amount according to proof at trial, and they seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b).

75. Additionally, Plaintiffs and the Class are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in CAL. LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

EIGHTH CAUSE OF ACTION

(Unfair Competition and Unlawful Business Practices [Cal. Labor Code §17200, *et. seq.*])
(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

76. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

77. Each Defendant named herein is considered a "person," as that term is defined under CAL. BUS. & PROF. CODE § 17021.

78. CAL. BUS. & PROF. CODE § 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

79. Plaintiff and the members of the Class have suffered an injury-in-fact as a result of Defendants' conduct in violation of the Unfair Competition Law (CAL. BUS. & PROF. CODE § 17200 *et. seq.*). Specifically, Plaintiff and the Class have lost money and/or property as a result of Defendants' wrongful conduct. The injuries suffered by Plaintiff and the Class were directly related to Defendants' wrongful conduct.

80. At all times relevant hereto, by and through the conduct described herein, Defendants, including DOES 1 through 50, have engaged in unfair, fraudulent and unlawful practices, in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.*, and have thereby deprived Plaintiff and members of

the Class of fundamental rights and privileges guaranteed to all employees under the California Labor Code.

81. All of the acts described herein as violations of, among other things, the California Labor Code and applicable IWC Wage Orders, are unlawful and in violation of public policy, and are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair, unlawful, and/or fraudulent business practices in violation of CAL. BUS. & PROF. CODE §§ 17200 *et. seq.* Specifically, Defendants' unfair, unlawful, and/or fraudulent business practices include the following violations:

- a. Failure to timely pay wages at the appropriate rate of pay in violation of CAL. LAB. CODE §§ 204, 510, 511, 558, 1182, 1182.12, 1194., 1194.2, 1198, 8 CAL. CODE REGS. § 11160(3), *et. seq.*, and 8 CAL. CODE REGS. § 11160(4), *et. seq.*;
- b. Failure to provide meal periods as mandated by CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11160(10), *et. seq.*;
- c. Failure to provide rest periods as mandated by CAL. LAB. CODE § 226.7, and 8 CAL. CODE REGS. § 11160 (11), *et. seq.*;
- d. Waiting Time Penalties pursuant to CAL. LAB. CODE §§ 201, 202, and 203;
- e. Failure to provide accurate itemized wage statements to employees in violation of CAL. LAB. CODE §§ 226 and 226.3.
- f. Failure to indemnify employees pursuant to CAL. LAB. CODE § 2802 and 8 CAL. CODE REGS. § 11160 (8)(B);

82. By and through the unfair, fraudulent, and unlawful business practices described herein, Defendants, including DOES 1 through 50, have obtained valuable property, money, and services from Plaintiffs and the Class, and has deprived them of valuable rights and benefits guaranteed by the law, all to their detriment.

83. Furthermore, Plaintiff is informed and believes, and thereupon alleges, that Defendants have underreported to federal and state authorities the wages earned by Plaintiff and the

members of the Class, and therefore, have underpaid state and federal taxes, employer matching funds, unemployment premiums, Social Security, Medicare and Workers' Compensation premiums. This conduct is criminal in nature and subjects Defendants to sanctions, fines, and imprisonment, and is actionable under CAL. BUS. & PROF. CODE §§ 1700, *et. seq.* and 17200 *et. seq.*

84. Plaintiff is informed and believes, and based upon that information and belief alleges, that by requiring Plaintiff and the Class to work without minimum wage compensation, or work overtime without receiving overtime compensation, and failing to provide meal and rest periods, Defendants have engaged in business within the state of California to offer its services at a lower price for the purpose of injuring competitors and/or destroying competition in violation of CAL. BUS. & PROF. CODE § 17043.

85. Pursuant to CAL. BUS. & PROF. CODE §§ 17071 and 17075, Defendants' failure to pay wages, overtime compensation, related benefits, and employment taxes, is admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business Trade Act.

86. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading.

87. Plaintiff is entitled to seek, and does seek, such relief as may be necessary to restore the money and property that Defendants have acquired, or of which Plaintiff and members of the Class have been deprived of, by means of the above-described unfair and unlawful business practices.

88. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries that they have suffered as a consequence of Defendants' unfair and unlawful business practices. As such, Defendants should be required to disgorge the unpaid moneys owed to Plaintiff and the Class.

89. Because Plaintiff seeks to enforce an important right affecting the public interest, *to wit*, the lawful payment of wages as required by law, the disgorgement of ill-gotten gains, and the restitution of unlawfully withheld wages, with interest thereon, Plaintiff requests an award of

attorneys' fees, pursuant to CAL. CODE CIV. PROC. § 1021.5, and costs pursuant to CAL. CODE CIV. PROC. § 1032

NINTH CAUSE OF ACTION

(Failure to Furnish Payroll Records [Cal. Labor Code §§226(b), 226(c), 226(f), 1198.5, 1198.5(a), 1198.5(b), and 1198.5(k)])

(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through 50)

90. Plaintiff re-alleges and incorporates herein each and every allegation contained in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

91. CAL. LAB. CODE § 226(b) states, in relevant part, that “[a]n employer... shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” CAL. LAB. CODE § 1198.5(a) likewise states, in relevant part, that “[e]very current and former employee... has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.”

92. An employer's failure to comply with an employee's request pursuant to section 226(b) of the California Labor Code within 21 days entitles the employee to of \$750 from the employer. CAL. LAB. CODE §§ 226(c) and (f).

93. An employer's failure to comply with an employee's request pursuant to section 1198.5 of the California Labor Code within 30 days entitles the employee to of \$750 from the employer. CAL. LAB. CODE §§ 1198.5(b) and (k).

94. On July 20, 2022, Plaintiff sent a letter to Defendant at 647 Young St. Santa Ana, CA 92705, which based on information and belief is the address that Defendant does business, formally requesting his entire employment file, including payroll records.

1 95. As of the filing of this action, Defendants have ignored Plaintiff's request
2 altogether.

3 96. By virtue of the foregoing, Plaintiff seeks penalties pursuant to sections 226(f) and
4 1198.5(b) of the California Labor Code, and injunctive relief to enforce Defendants' compliance
5 along with an award for costs and reasonable attorneys' fees, pursuant to sections 226(h) and
6 1198.5(l) of the California Labor Code.

7 **TENTH CAUSE OF ACTION**

8 **(For Penalties Pursuant to Private Attorney General Act ("PAGA") [Cal. Labor Code**
9 **§2699, *et. seq.*])**

10 **(By Plaintiff and the Putative Class Against All Defendants, Including DOES 1 through**
11 **50)**

12 97. Plaintiff re-alleges and incorporates herein each and every allegation contained
13 in each of the preceding paragraphs in this FAC as fully set forth herein by reference.

14 98. The California Private Attorney General Act of 2004, codified under sections 2698-
15 2699 of the California Labor Code, expressly establishes that any provision of the California Labor
16 code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its
17 departments, divisions, commissions, boards agencies or employees for a violation of the California
18 Labor Code. Alternatively, the civil penalties may be recovered through a civil action brought by an
19 aggrieved employee on behalf of himself or herself, and other current or former employees.

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

100. Plaintiff and the other members of the Class are “aggrieved employees” as defined by section 2699 of the California Labor Code in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

101. Plaintiff seeks civil penalties for Defendants' violations of the following Labor Code sections and Industrial Wage Orders:

- a. Failure to compensate employees at the minimum wage and the prevailing wage in violation of *Cal. Labor Code* §§1197, 1182.12, 1194, 1194.2, 1197.1, and 1199, *et. seq.*, §1720, *et. seq.*, and *Cal. Code Regs* §11160(4),
- b. Failure to timely pay wages at the appropriate rate of pay in violation of *Cal. Labor Code* §§ 510, 511, 558, 1182, 1182.12, 1194, 1194.2, 1198, 204.3, & 1194; 8 *Cal Code Regs* §11160(3), *et. seq.*
- c. Failure to provide meal periods as mandated by *Cal. Labor Code* §§226.7 and 512, and 8 *Cal. Code Regs* §11160(10), *et. seq.*
- d. Failure to provide rest periods as mandated by *Cal. Labor Code* §226.7 and 8 *Cal. Code Regs* §11160(11), *et. seq.*
- e. Failure to provide employee adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing in violation of 8 *Cal. Code Regs* §11160(10)(D).
- f. Failure to compensate for missed rest periods at his regular rate of pay as mandated by *Cal. Labor Code* §226.7 and 8 *Cal. Code Regs* §11160(11), *et. seq.*
- g. Failure to provide prompt payment of wages to employees upon termination and resignation in violation of *Cal. Labor Code* §§201, 202, and 203

- 1 h. Failure to provide accurate itemized wage statements to employees in
2 violation of *Cal. Labor Code* §§226 and 226.3 and 8 *Cal. Code Regs*
3 §11160(6), et. seq.
- 4 i. Failure to comply with payroll reporting requirements for public works
5 projects in violation of *Cal. Labor Code* §1776 and 8 *Cal. Code Regs*
6 §11160(6), et. seq.
- 7 j. Failure to Reimburse for Work-Related Expenses in violation of *Cal. Labor*
8 *Code* §2802, et. seq. and 8 *Cal. Code Regs* §11160(8), et. seq.

9 102. Plaintiff electronically submitted written notice to the Agency, setting forth his
10 contentions and claims on behalf of himself and on behalf of all those similarly situated.

11 103. The Agency has failed to respond within the time prescribed under section 2699.3,
12 subd. (a)(2)(A), of the California Labor Code, thereby exhausting Plaintiff's administrative
13 remedies. Plaintiff therefore amends the existing complaint herein, as a matter of right, to add a
14 PAGA cause of action. CAL. LAB. CODE § 2699.3(a)(2)(C).

15 104. Pursuant to section 2699 of the California Labor Code, Plaintiff, individually and on
16 behalf of all aggrieved employees, requests and is entitled to recover from the Defendants wage
17 compensation for uncompensated wages according to proof, interest, attorney's fees, and costs
18 pursuant to CAL. LABOR CODE § 218.5, as well as all civil penalties against Defendants, including
19 DOES1 through 50, including but not limited to:

- 20 a. Where penalties are not already specified in the applicable provision of the
21 California Labor Code, penalties under *Cal. Labor Code* §2699 in the amount
22 of \$100 for each aggrieved employee per pay period for initial violation, and
23 \$200 for each aggrieved employee for each aggrieved employee per pay period
24 for each subsequent violation (See *Cal. Labor Code* §2699(f)(2));

- 1 b. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE §
2 226, in addition to any other penalty provided by law, of two hundred fifty
3 dollars (\$250) per aggrieved employee for the first violation, and one thousand
4 dollars (\$1,000) per aggrieved employee for each subsequent violation;
5 c. Penalties under Title 8 of the California Code of Regulations, as set forth in
6 the applicable Wage Order, in the amount of \$50 for each aggrieved employee
7 per pay period for an initial violation, and \$100 for each aggrieved employee
8 per pay period for each subsequent violation (*see* CAL. LAB. CODE § 558);
9 d. Penalties under CAL. LABOR CODE § 210 in addition to, and entirely
10 independent and apart from, any other penalty provided in the California
11 Labor Code, in the amount of \$100 for each aggrieved employee per pay
12 period for the initial violation, and \$200 for each aggrieved employee per pay
13 period for each subsequent violation or any willful or intentional violation,
14 plus 25% of the wages wrongfully withheld; and
15 e. Any and all additional penalties and sums as provided by the California Labor
16 Code, and/or other statutes.

17 105. In addition, Plaintiff seeks and is entitled to have 75% of all penalties recovered
18 pursuant §§2699, *et. seq.* allocated to the LWDA, and 25% to the aggrieved employees.

19 106. Further, Plaintiff seeks and is entitled to recover reasonable attorneys' fees and
20 costs pursuant to 2699, 218.5, 210, and 212 of the California Labor Code, and any other
21 applicable statute, including *Cal. Code Civ. Pro.* §1032, *et. seq.*

22
23
24 **PRAYER**

25 WHEREFORE, Plaintiff prays for judgment as follows:

26 **A. On The First Cause Of Action:**

27 FIRST AMENDED CLASS ACTION COMPLAINT

1 1. For compensatory damages, including unpaid wages, and other losses in an amount
2 according to proof;

3 2. For liquidated damages pursuant to CAL. LAB. CODE § 1194.2;

4
5 3. For an award of interest, including prejudgment interest at the legal rate pursuant to
6 CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and

7 4. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5,
8 1194, and CAL. CODE CIV. PROC. § 1032.

9
10 **B. On the Second Cause of Action:**

11 5. For compensatory damages, including lost wages, and other losses, in an amount in an
12 amount according to proof;

13
14 6. For an award of interest, including prejudgment interest at the legal rate pursuant to
15 CAL. LAB. CODE §§ 218.6, 1194, and CAL. CIV. CODE § 3289, *et. seq.*; and

16 7. For reasonable attorneys' fees and costs of suit pursuant to CAL. LAB. CODE §§ 218.5,
17 1194, and CAL. CODE CIV. PROC. § 1032.

18 **C. On the Third and Fourth Causes of Action:**

19
20 8. For unpaid premium payments in an amount according to proof;

21 9. For reasonable costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

22
23 10. For an award of interest, including prejudgment interest at the legal rate pursuant to
24 CAL. CIV. CODE § 3287.

25 **D. On the Fifth Cause of Action:**

11. For statutory penalties pursuant to CAL. LAB. CODE § 226;

12. 14. For attorneys' fees and costs pursuant to CAL. LAB. CODE § 226(g) and CAL. CODE CIV. PROC. § 1032, *et. seq.*

E. On the Sixth Cause of Action:

13. For statutory penalties CAL. LAB. CODE § 203;

14. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032.

F. On the Seventh Cause of Action

15. For reimbursement of all necessary expenditures, plus interest thereon pursuant to CAL. LAB. CODE § 2802(b); and

16. For costs and attorneys' fees pursuant to CAL. LAB. CODE § 2802(c) and CAL. CIV. CODE § 1032, *et. seq.*

G. On the Eighth Cause of Action:

17. That Defendants, including DOES 1 through 50, be ordered and enjoined to pay restitution and penalties to Plaintiffs due to Defendants' unlawful and/or unfair activities, pursuant to Business and Professions Code §§ 17200-05;

18. That Defendants, including DOES 1 through 50, further be enjoined to cease and desist from unlawful and/or unfair activities in violation of Business and Professions Code § 17200, *et. seq.*;

19. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

20. For attorneys' fees pursuant to CAL. CODE CIV. PROC. § 1021.5.

H. On the Ninth Cause of Action:

21. For penalties in the amount of \$1,500 pursuant to CAL. LAB. CODE §§ 226(f) and 1198.5(b);

22. For injunctive relief pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l); and

23. For reasonable costs, including attorneys' fees, pursuant to CAL. LAB. CODE §§ 226(h) and 1198.5(l)

I. On the Tenth Cause of Action:

24. Penalties pursuant to CAL. LABOR CODE § 2699(f)(2) in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

25. Penalties under CAL. LAB. CODE § 226.3 for violations of CAL. LAB. CODE § 226, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation;

26. Penalties under Title 8 of the California Code of Regulations, as set forth in the applicable Wage Order, in the amount of \$50 for each aggrieved employee per pay period for an initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation (*see* CAL. LAB. CODE § 558);

27. Penalties under CAL. LABOR CODE § 210 in the amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or any willful or intentional violation, plus 25% of the wages wrongfully withheld;

28. Any and all additional penalties and sums as provided by the CAL. LABOR CODE and/or other statutes; and

29. Reasonable attorney's fees and costs pursuant to sections 2699, 218.5, 210 and 212 of the California Labor Code, and any other applicable statute.

J. On Causes of Action One through Eight

30. For an order granting class certification

K. On All Causes of Action:

31. For costs of suit pursuant to CAL. CODE CIV. PROC. § 1032; and

32. For other and further relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all triable claims

Dated: May 22, 2023

LAW OFFICES OF RICHARD KIM PC

By: Richard Kim
RICHARD KIM

Attorneys for Plaintiff and the Putative Class