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JUAN LOPEZ SERNA

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

JUAN LOPEZ SERNA, an individual, on
his own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

TILEIMPACT, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 25CV137555

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME/DOUBLE TIME WAGES DUE (Cal. Labor Code §§ 510, 511, 558, 1194, 1198; IWC WAGE ORDER NO. 16);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC WAGE ORDER NO. 16);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC WAGE ORDER NO. 16);**
- 4. FAILURE TO PROVIDE TIMELY OFF DUTY REST PERIODS (Cal. Labor Code §§ 226.7, 512; IWC WAGE ORDER NO. 16);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226);**
- 6. FAILURE TO PAY WAGES DUE ON TERMINATION (Cal. Labor Code §§ 201-203);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code § 2802);**
- 8. FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE (Cal. Labor Code**

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All allegations in this Complaint are allegations which pertain to the Plaintiff name, address, telephone number, e-mail address, or any other identifying support or is likely to have evidence of the Plaintiff's identity through further investigation and discovery.

Juan Lopez Serna ("Plaintiff") alleges:

1. This is a class action brought on behalf of Plaintiff and all other employees employed by TileImpact, Inc. ("Defendant" or "Defendants"). Plaintiff brings this action on behalf of Plaintiff and all other employees to recover wages from Defendant due to Defendant's failure to pay Plaintiff and other employees time wages, failure to pay minimum wages, failure to pay overtime wages, failure to pay statutory compensation due), failure to issue a written statement of reasons for termination on termination, failure to reimburse business expenses, failure to allow inspection of employment records.
2. Plaintiffs have worked as employees of Defendant. While working, Plaintiffs have been forced to work under conditions created by Defendant's efforts to maximize profits, including but not limited to:
3. Plaintiff, like his co-workers, is subject to the applicable limitations period, spend their work time under illegal and highly regimented circumstances, and Defendant's insistence to strictly monitor and curtail labor.

Juan Lopez Serna (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by TileImpact, Inc. (“Defendant”) (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to pay overtime/double time wages, failure to pay minimum wages, failure to provide meal/rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay all wages on termination, failure to reimburse business expenses, failure to pay sick pay and failure to allow inspection of employment records.
2. Plaintiffs have worked as employees at Defendant’s warehouse in California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.
3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spend their workdays at Defendant’s warehouse in California, under illegal and highly regimented circumstances. That regimen results from Defendant’s insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not

1 paying for all labor costs, failing to pay overtime/double time, failing to pay minimum wages,
2 refusing to provide timely meal/rest periods, not paying the required extra hour for missed
3 meal/rest breaks, failing to issue accurate wage statements, failing to pay all wages on
4 termination, failing to reimburse business expenses, failing to pay sick pay, failing to allow
5 inspection of employment records, and by using other unlawful stratagems to ensure that labor
6 costs remain artificially low.

7 4. Plaintiff brings this class action to recover, among other things, wages and
8 penalties from unpaid wages earned and due, including but not limited to, premium
9 overtime/double time wages, minimum wages, premium meal/rest break wages, penalties for
10 failure to provide accurate itemized wage statements, wages and penalties for failure to issue all
11 wages on termination, damages for failure to reimburse business expenses, wages and penalties
12 for failure to pay sick pay, penalties for failure to allow inspection of employment records and
13 interest, attorneys' fees, costs, and expenses.

14 5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for
15 himself and all members of the class, to compensate these workers for the unpaid wages and to
16 protect current and future workers of Defendant from being subjected to similar wage theft and
17 otherwise unlawful working conditions.

18 6. Plaintiff also brings an action seeking relief for Defendant's violations of
19 California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and
20 disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair
21 business practices, as well as injunctive relief.

22 JURISDICTION AND VENUE

23 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
24 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
25 *Professions Code* §§ 17200 *et seq.* Plaintiff Juan Serna Lopez brings this Complaint on his
26 own behalf and on behalf of all persons in the Class as defined in paragraph 17 below.

27 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
28 395.5, because the claims made, and the *Labor Code* violations as against the persons identified

1 herein, occurred in the County of Alameda and because Defendant owned and operated its
2 business in the County of Alameda.

3 **PAGA NOTICE**

4 9. Pursuant to the California Labor Code, on or about August 15, 2025, Plaintiff
5 filed a notice with Labor and Workforce Development Agency (LWDA) of his intent to
6 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
7 Plaintiff further reserves the right to amend this Complaint once he completes and complies
8 with the provisions under the law.

9 **THE PARTIES**

10 **PLAINTIFF**

11 10. At all times relevant hereto, Plaintiff was:

- 12 (a) An individual over age 18 and a resident of Hayward, California;
- 13 (b) Employed as an hourly employee for Defendant in California;
- 14 (c) Did not receive overtime/double time compensation required by *Labor*
15 *Code* §§510, 511, 558, 1194, 1198 and IWC Wage Order No. 16;
- 16 (d) Did not receive minimum wages in violation of *Labor Code* §§1194,
17 1194.2, 1997, 1197.1, 1198 and IWC Wage Order No. 16;
- 18 (e) Did not receive the meal/rest periods required by *Labor Code* §266.7 and
19 IWC Wage Order No. 16;
- 20 (f) Did not receive accurate wage statements as mandated by *Labor Code*
21 §226;
- 22 (g) Was not paid all wages owed on termination as mandated by *Labor Code*
23 §§ 201-203;
- 24 (h) Was not reimbursed his necessary business expenses in violation of
25 *Labor Code* § 2802;
- 26 (i) Was not provided sick leave wages when due in violation of *Labor Code*
27 §§201-204, 218, 218.5, 233, 245, 246 et seq.; and
28

- 1 (j) Was not provided his personnel records. Each of these was a violation of
2 the *Labor Code*.

3 **DEFENDANT**

4 11. Plaintiff is informed and believes, and based on that information and belief,
5 alleges, Defendant is, and at all times mentioned herein was:

- 6 (a) A California corporation, with a principal place of business at 3392
7 Seldon Court, Fremont, CA 94539. Defendant has been authorized to do
8 business and has been doing business in the County of Alameda;
9 (b) The former employer of Plaintiff and the current and former employer of
10 the putative Class members;
11 (c) Paid Plaintiff and all Class members on an hourly basis;
12 (d) Failed to pay Plaintiff and all putative Class members premium
13 overtime/double time wages;
14 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
15 (f) Failed to provide Plaintiff and all putative Class members with meal/rest
16 periods and failed to provide Plaintiff and all putative Class members
17 with accurate itemized wage statements;
18 (g) Failed to pay Plaintiff and all putative Class members wages owed on
19 termination and/or resignation;
20 (h) Failed to reimburse business expenses to Plaintiff and all putative Class
21 members;
22 (i) Failed to provide sick pay for Plaintiff and all putative Class members;
23 and
24 (j) Failed to provide Plaintiff and all putative Class members their personnel
25 records. Each of these was a violation of the *Labor Code*.

26 12. The true names and capacities, whether individual, corporate, subsidiary,
27 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
28 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*

1 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
2 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

3 13. Plaintiff is informed and believes, and based on that information and belief
4 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
5 reside in or are authorized to do, or are otherwise doing, business in the State of California.
6 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
7 conduct business in the County of Alameda. Each of the Defendants DOES 1 through 100 was
8 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter
9 ego and/or representative of one or more of the other Defendants named herein, and acting with
10 permission, authorization, and/or ratification and consent of the other Defendants.

11 14. Plaintiff is informed and believes, and based on that information and belief
12 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
13 inclusive, are responsible in some manner for one or more of the events and happenings that
14 proximately caused the injuries and damages hereinafter alleged.

15 15. Plaintiff is informed and believes, and based on that information and belief
16 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
17 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
18 the other Defendants and that each Defendant was acting within the course and scope of his,
19 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
20 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
21 Class, for the damages sustained as a proximate result of their conduct.

22 16. Plaintiff is informed and believes, and based on that information and belief
23 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
24 inclusive, knowingly and willfully acted in concert, conspired and agreed together among
25 themselves and entered into a combination and systemized campaign of activity to *inter alia*
26 damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
27 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
28 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their

1 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
2 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
3 the actions of one Defendant was accomplished in concert with, and with the knowledge,
4 ratification, authorization and approval of each of the other Defendants.

5 6 **CLASS ALLEGATIONS**

7 **A. The Definition of the Class**

8 17. The Class ("the Class") is defined as follows:

9 (a) "All current and former employees who were hourly paid employees of
10 Defendant and worked for Defendant in California at any time during the period
11 commencing on the date that is four (4) years prior to the filing of this
12 Complaint and continuing through the present date (the "Class Period")."

13 (b) "All persons who were hourly paid employees of Defendant and worked for
14 Defendant in California and left the employ of Defendant at any time during the
15 period commencing on the date that is within one (1) year prior to the filing of
16 this Complaint and continuing through the present date (the "Class Period")."

17 Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
18 amend or modify the Class description with greater specificity or further
19 division into subclasses or limitation to particular issues.

20 **B. Maintenance of the Action**

21 18. Plaintiff brings this action individually and on behalf of himself and as
22 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
23 and 17204 and *Code of Civil Procedure* § 382.

24 **C. The Class Requisites**

25 19. At all material times, Plaintiff was a member of the Class.

26 20. The Class action meets the statutory prerequisites for maintaining a class action
27 under Code of Civil Procedure § 382 in that:
28

- 1 (a) The persons who comprise the Class are so numerous that the joinder of all
2 those persons is impracticable and the disposition of their claims as a Class
3 will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
5 that are raised in this Complaint are common to the Class and will apply
6 uniformly to every Class member;
- 7 (c) The claims of the representative Plaintiff are typical of the claims of each
8 Class member. Plaintiff, like all Class members, has sustained damages
9 arising from Defendant's violations of the laws of the State of California.
10 Plaintiff, and the Class members, were and are similarly or identically
11 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
12 pattern of misconduct engaged in by the Defendant;
- 13 (d) The representative Plaintiff has, and will continue to, fairly and adequately
14 represent and protect the interests of the Class and has retained counsel
15 who are competent and experienced in class action litigation. There are no
16 material conflicts between the claims of the representative Plaintiff and the
17 Class members that would make class certification inappropriate. Counsel
18 for the Class will vigorously assert the claims of all Class members.

19 21. The persons who comprise the Class are so numerous that joining all of them is
20 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
21 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
22 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
23 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
24 Plaintiff are experienced, qualified and generally able to conduct complex class action
25 litigation.

26 22. The Court should permit the action to be maintained as a class action under
27 *Code of Civil Procedure* § 382 because:
28

- 1 (a) The questions of law and fact common to the Class predominate over any
2 question affecting only individual members:
- 3 (b) A class action is superior to any other available method for fairly and
4 efficiently adjudicating the claims of the Class;
- 5 (c) The Class members are so numerous that it is impractical to bring all of
6 them before the Court;
- 7 (d) Plaintiff and other Class members will not be able to obtain effective and
8 economic legal redress unless the action is maintained as a class action;
- 9 (e) There is a community of interest in obtaining appropriate legal and
10 equitable relief for the statutory violations, and in obtaining adequate
11 compensation for the damages and injuries for which Defendant is
12 responsible in an amount sufficient to adequately compensate the Class
13 members;
- 14 (f) Without Class certification, the prosecution of separate actions by
15 individual Class members would create a risk of:
- 16 i. Inconsistent or varying adjudications for individual Class members
17 that would establish incompatible standards of conduct for
18 Defendant; and/or,
- 19 ii. Adjudication for individual Class members that would, as a
20 practical matter, dispose of other non-party members' interests, or
21 that would substantially impair or impede the non-parties' ability
22 to protect their interests, by, for example, potentially exhausting
23 the funds available from Defendant, and
- 24 (g) Defendant has acted or refused to act on grounds generally applicable to
25 the Classes, making final injunctive relief appropriate for the Class, as a
26 whole.

27 23. Plaintiff contemplates eventually issuing notice to the proposed Class Members
28 that would set forth the subject and nature of the action. The Defendant's own business records

1 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
2 any further notices may be required, Plaintiff would contemplate using additional media and/or
3 mailing.

4 **GENERAL ALLEGATIONS**

5 24. At all times material hereto, Defendant has been and is, a commercial tile
6 contractor.

7 25. Plaintiff and members of the Class were employed as Tile Finishers, Drivers and
8 Warehouse Managers and other non-exempt employees by Defendant in California at various
9 times during the Class Period.

10 26. The employment by Defendant of the Class members, and each them, is
11 governed by Industrial Welfare Commission Wage Order No. 16, which covers those persons
12 employed in the construction, drilling, mining and logging industries.

13 **THE CONDUCT**

14 27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
15 Plaintiff and members of the Class wages and compensation owed under California law.

16 28. Starting on or about April 22, 2024 and continuing to June 27, 2025, Defendant
17 employed Plaintiff on an hourly basis as a Tile Finisher/Driver/Warehouse Manager at its
18 warehouse in Fremont, California. Plaintiff picked up materials, attended daily meetings,
19 performed foreman duties, called vendors and set tile.

20 29. While employed by Defendant as a Tile Finisher/Driver/Warehouse Manager,
21 Plaintiff was paid approximately \$30.00 per hour.

22 **OFF THE CLOCK WORK**

23 30. Employers must compensate non-exempt employees for "off-the-clock" work
24 (before punching in or after punching out on a time clock) if the employers knew or should
25 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
26 (2000) 22 Cal. 4th 575, 585.

27 31. Defendant required Plaintiff and the Class to regularly perform compensable
28 tasks off-the-clock for which they did not receive any compensation. Specifically, at all times

1 relevant, Plaintiff and Class members consistently worked hours for which they were not paid
2 because Plaintiff and the Class members were required to engage in pre- and post- shift
3 activities while off the clock. Plaintiff and Class members were asked to arrive early prior to
4 the start of their shifts and begin working, but not clock in. Further, Plaintiff and Class
5 members were routinely required to answer calls after clocking out for their shifts. Plaintiff
6 and Class members worked approximately 1 hour off the clock each week. Plaintiff and Class
7 members were not compensated for this off the clock work.

8 32. As a result, and because they improperly treated such off the clock work as non-
9 compensable, Defendant failed to compensate Plaintiff and the Class for such time.

10 **REGULAR RATE OF PAY**

11 33. California law uses the terms "compensation" and "pay" interchangeably and
12 requires that all applicable remuneration, including but not limited to, commissions, and/or
13 non-discretionary shift differentials/shift premiums, etc., be included when calculating an
14 employee's regular rate of pay.

15 34. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
16 should have known that Plaintiff and Class members were entitled to be paid at a regular rate
17 of pay, and corresponding sick pay rate, that included as eligible income all income derived
18 from all forms of compensation.

19 35. Defendant failed to properly pay and calculate sick pay due to excluding shift
20 differentials/shift premiums from sick pay calculations. Such shift differentials/shift premiums
21 are required under California law to be included in an employee's regular rate of pay for sick
22 pay calculations. Defendant failed to do so, thereby failing to pay employees their full wages
23 as required under the Labor Code.

24 36. Plaintiff and members of the Class received shift differentials that must be
25 included when calculating their regular rates of pay for purposes of sick pay. However,
26 Defendant failed to correctly calculate Plaintiff and members of the Class's sick pay to include
27 all applicable remuneration, including, but not limited to, shift differentials, etc.

28 **FAILURE TO PAY OVERTIME/DOUBLE TIME WAGES**

37. Under California law, non-exempt employees as defined by Wage Order No. 16, are entitled to premium wages for overtime worked. Under California law, an hourly paid employee is entitled to overtime pay when they exceed eight hours of work in a single day, exceed 40 hours of work in a week or work seven days in a row. Defendant was required to compensate Plaintiff with premium pay for all double-time performed, for hours worked in excess of twelve (12) hours per workday and for work in excess of eight hours on any seventh day of a workweek.

38. During the Class Period, it was the practice and policy of Defendant to not properly pay employees' overtime/double time. Plaintiff and Class members were not paid overtime/double time because they were not paid for their off the clock work. Further, Defendant did not pay Plaintiff and Class members double time when they worked 12 or more hours per day. As a result, Plaintiff and Class members were not paid for all of the overtime/double time hours they worked.

FAILURE TO PAY MINIMUM WAGES

39. Under California law, non-exempt employees as defined by IWC Wage Order No. 16 are entitled to minimum wages. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” The applicable IWC Wage Order(s), including IWC Wage Order No. 16-2001, obligates employers to pay each employee minimum wages for all hours worked.

40. These minimum wage standards apply to each hour employees worked or were subject to control by the employer for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee or subject to the employer's control is unlawful, even if averaging an employee's total pay over all hours

1 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
2 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

3 41. Plaintiff and Class members were not afforded compliant meal/rest breaks and
4 were required to engage in off the clock activities. Further, their hours were rounded down. As
5 a result, Defendant failed to pay Plaintiff and Class members all minimum wages due.

6 42. At all times during the relevant time period, Plaintiff and the Class routinely
7 worked schedules such that they were due pay at minimum wage rates. During this period, it
8 was the practice and policy of Defendant to not pay employees' minimum wages. Monies for
9 unpaid minimum wages remain due and owing.

10 **FAILURE TO AFFORD COMPLIANT MEAL BREAKS**

11 43. Under California law, non-exempt employees as defined by Wage Order No. 16,
12 are entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
13 worked, or major fraction thereof. Non-exempt employees are entitled to one hour pay at their
14 regular pay rate for each day the requisite meal periods are not provided.

15 44. Plaintiff and Class members' meal breaks were routinely interrupted and/or not
16 afforded.

17 45. Defendant's policies and procedures were applied to all non-exempt employees
18 in California and resulted in non-exempt employees working time which was not compensated
19 by any wages in violation of Labor Code sections 510, 1194 and Wage Order No. 16. As a
20 result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of their
21 California non-exempt employees whose daily hours were reduced even though their meals
22 periods were not properly afforded.

23 **REST PERIODS NOT PROPERLY AFFORDED**

24 46. Plaintiff and Class members were not afforded rest breaks. As a result, rest
25 breaks were on duty.

26 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

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1 47. As a result of Defendant's failure to pay employees at required overtime/double
2 time rates, minimum wages, premium pay for meal/rest breaks not afforded and sick pay, the
3 wage statements issued to the employees did not comply with *Labor Code* §226 and the
4 California Industrial Welfare Commission ("IWC") Wage Order No. 16 in that they did not
5 accurately reflect all wages earned and due and owing.

6 **FAILURE TO PAY WAGES ON TERMINATION**

7 48. As a further result of Defendant's failure to pay employees at required
8 overtime/double time rates, minimum wages, afford proper meal/rest breaks and sick pay, when
9 the employees left their employ, they were not timely paid all wages due them, as required by
10 Labor Code §§ 201, 202 and IWC Wage Order No. 16.

11 **FAILURE TO PROPERLY PAY SICK PAY WAGES**

12 49. Defendant failed to provide Plaintiff and the Class sick pay wages because shift
13 differentials were not blended into their sick pay rate.

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 50. Defendant failed to reimburse Plaintiff and Class members for their personal cell
16 phone and vehicle use.

17 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

18 51. Defendant failed to allow Plaintiff and Class members to timely inspect their
19 records and payroll files.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME/DOUBLE TIME**

22 **(Labor Code §§510, 511 558, 1194, 1198 and IWC Wage Order No. 16 by Plaintiff Against**
23 **Defendant and Does 1-100)**

24 52. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 53. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab.
27 Code §§510, 1194, and 1198, and IWC Wage Order No. 16, Defendant was required to
28 compensate Plaintiff and Class members with premium pay for all overtime work performed,

1 for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for
2 the first eight (8) hours on the seventh (7th) consecutive day of any work week. Defendant was
3 required to compensate Plaintiff and Class members with premium pay for all double-time
4 performed, for hours worked in excess of twelve (12) hours per workday and for work in
5 excess of eight hours on any seventh day of a workweek.

6 54. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
7 who had not been paid overtime/double time compensation could recover the unpaid balance of
8 the full amount of overtime/double time wages due, including interest thereon, together with
9 reasonable attorneys' fees and costs of suit.

10 55. Pursuant to IWC Wage Order No. 16, § 3, "Employment beyond eight (8) hours
11 in any workday is permissible provided the employee is compensated for such overtime at not
12 less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
13 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday..."

14 56. California Labor Code section 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the
18 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid
wages.

24 (3) Wages recovered pursuant to this section shall be paid to the affected
25 employee...

26 (c) The civil penalties provided for in this section are in addition to any
27 other civil or criminal penalty provided by law.
28

1 57. Throughout Plaintiff's and Class members' employment, Plaintiff and Class
2 members worked overtime/double time hours and were not fully paid overtime/double time
3 pay.

4 58. As alleged above, Defendant required Plaintiff and the Class to regularly
5 perform compensable tasks pre- and post-shift off-the-clock for which they did not receive any
6 compensation. Further, when Plaintiff and Class members worked more than 12 hours in a
7 day, they were not paid double time.

8 59. The foregoing overtime/double time compensation is owed and unpaid. As a
9 direct and proximate result of Defendant's failure and refusal to pay overtime/double time,
10 Plaintiff and Class members suffered damages in an amount to be proven at trial.

11 60. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
12 counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover
13 Plaintiff's attorneys' fees, costs and interest.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(IWC Wage Order No. 16; Labor Code §§ 1194, 1194.2, 1997, 1197.1, 1198 By Plaintiff**
17 **Against Defendant and Does 1 through 100)**

18 61. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this Complaint.

20 62. Labor Code §§ 1194(a) states: "Notwithstanding any agreement to work for a
21 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
22 compensation applicable to the employee is entitled to recover in a civil action the unpaid
23 balance of the full amount of this minimum wage or overtime compensation, including interest
24 thereon, reasonable attorney's fees, and costs of suit."

25 63. *Labor Code* § 1197 states the California requirement that employees must be
26 paid at least the minimum wage fixed by the Commission, and any payment of less than the
27 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving
28 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of

1 the full amount of this minimum wage.” IWC Wage Order No. 16-2001 also obligates
2 employers to pay each employee minimum wages for all hours worked. These minimum wage
3 standards apply to each hour employees worked for which they were not paid. Therefore, an
4 employer’s failure to pay for any particular hour of time worked by an employee is unlawful,
5 even if averaging an employee’s total pay over all hours worked, paid or not, results in an
6 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
7 324 (2005).

8 64. Pursuant to IWC Wage Orde No. 16, Defendant is required to pay the members
9 of the Class for all hours worked, meaning the time during which an employee is subject to the
10 control of an employer, including all the time the employee is suffered or permitted to work,
11 whether or not required to do so.

12 65. Furthermore, pursuant to *Labor Code* § 1198, “[t]he maximum hours of work
13 and the standard conditions of labor fixed by the commission shall be the maximum hours of
14 work and the standard conditions of labor for employees. The employment of any employee for
15 longer hours than those fixed by the order or under conditions of labor prohibited by the order
16 is unlawful.”

17 66. Defendant failed to satisfy minimum wage requirements because they failed to
18 afford compliant meal/rest breaks to Plaintiff and Class members in violation of *Labor Code* §§
19 1197, 1198 and IWC Wage Order No. 16. Further, Plaintiff and Class members were required
20 to handwrite their time, including meal breaks, on time sheets that were approved by superiors
21 on a weekly bases. The records always end in :00 or :30, which suggests rounding down of
22 hours.

23 67. Defendant’s pattern, practice and uniform administration of corporate policy
24 regarding illegal employee compensation as described herein is unlawful and creates an
25 entitlement, pursuant to *Labor Code* § 218, to recovery by Plaintiff and the members of the
26 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
27 the appropriate rate.
28

1 68. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
3 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
4 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
5 the time associated with the overtime for which they received no compensation. *See Sillah v.*
6 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
7 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
8 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
9 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

10 69. Plaintiff and the other Class members suffered and continue to suffer losses
11 related to the use and enjoyment of compensation due and owing to them as a direct result of
12 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
13 proof at trial and within the jurisdictional limitations of this Court.

14 70. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
15 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
16 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
17 proof.

18 **THIRD CAUSE OF ACTION**

19 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

20 **(IWC Wage Order No. 16; Labor Code §§ 226.7, 512 By Plaintiff Against Defendant and**
21 **Does 1 through 100)**

22 71. Plaintiff and the Class reallege and incorporate by reference all of the allegations
23 set forth in this Complaint.

24 72. California Labor Code §226.7(a) prohibits an employer from requiring an
25 employee to work during any meal period mandated by an applicable Industrial Wage Order.
26 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
27 employee to work during a meal or rest break or recovery period mandated pursuant to an
28

1 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
2 Commission..."

3 73. California Labor Code §1198 makes unlawful the employment of an employee
4 under conditions the IWC prohibits.

5 74. Wage Order No. 16 provides, in relevant part: "No employer shall employ any
6 person for a work period of more than five (5) hours without a meal period of not less than 30-
7 minutes, except that when a work period of not more than six (6) hours will complete the day's
8 work the meal period may be waived by mutual consent of the employer and the employee."

9 75. IWC Wage Order No. 16, section (11)(c) further provides, in relevant part:
10 "Unless the employee is relieved of all duty during a 30-minute meal period, the meal period
11 shall be considered an 'on duty' meal period and counted as time worked."

12 76. Section 512(a) of the California Labor Code provides, in relevant part, that:

13 An employer may not employ an employee for a work period of more than five
14 hours per day without providing the employee with a meal period of not less
15 than 30-minutes, except that if the total work period per day of the employee is
16 no more than six hours, the meal period may be waived by mutual consent of
17 both the employer and employee. An employer may not employ an employee
18 for a work period of more than 10 hours per day without providing the
19 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

20 77. The Labor Code and Wage Order No. 16 provisions cited above require
21 California employers to provide employees with off-duty 30-minute meal periods on or before
22 the fifth hour of their shifts. To satisfy this obligation, California employers must: (1) make
23 employees aware of their right to off-duty 30-minute meal periods before the fifth hour of their
24 shifts, and (2) ensure that employees are actually free of job duties for thirty minutes per day on
25 or before the fifth hour of their shifts.

26 78. As alleged herein, Defendant failed to relieve employees of duties for meal
27 breaks throughout the Class Period. Plaintiff and the members of the Class's meal periods
28 were not compliant since their meal breaks were interrupted, and/or not afforded. Plaintiff and

1 Class members were required to complete certain tasks within certain timeframes. As a result,
2 they were required respond to calls during their meal breaks.

3 79. Under California law, employers must also record their employees' meal
4 periods: "Every employer shall keep accurate information with respect to each employee,
5 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
6 operations cease ... need not be recorded." IWC Wage Order No. 16, § (7)(A)(3). Where the
7 employer has failed to keep records required by statute, the consequences of such failure should
8 fall on the employer, not the employee. In such a situation, imprecise evidence by the employee
9 can provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
10 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
11 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
12 known its employees were regularly not being afforded compliant meal periods during the
13 Class Period.

14 80. Plaintiff and Class members' meal periods were not accurately recorded because
15 the times were rounded down.

16 81. Defendant has a policy or practice of failing to ensure that Plaintiff and
17 members of the class take off duty meal periods required by California Labor Code §226.7 and
18 Wage Order No. 16, §11.

19 82. By their actions in failing to afford Plaintiff and Class members compliant meal
20 periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order No. 16 in
21 the amount of one additional hour of pay at the employee's regular rate of compensation for
22 each work period during each day in which Defendant failed to provide employees with
23 statutory timely off-duty meal periods.

24 83. Defendant also has a policy or practice of failing to pay each of their employees
25 who was provided with an on-duty meal period an additional one hour of compensation at each
26 employee's regular rate of pay.

27 //

28 //

1 84. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
2 bring a private right of action to recover wages due based on the deprivation of timely meal
3 periods under Cal. Labor Code § 226.7(b).

4 85. As a direct and proximate result of Defendant's unlawful conduct as alleged
5 herein, Plaintiff and members of the Class have sustained economic damages, including but not
6 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
7 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
8 relief due to Defendant's violations of the California Labor Code and IWC Wage Order No. 16.

9 **FOURTH CAUSE OF ACTION**

10 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY REST PERIODS**

11 **(IWC Wage Order No. 16; Labor Code §§ 226.7, 512 By Plaintiff Against Defendant and**
12 **Does 1 through 100)**

13 86. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this Complaint.

15 87. Labor Code § 226.7 and Wage Order No. 16 provide that employers shall
16 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
17 per four hours of work, or major fraction thereof.

18 88. Labor Code § 226.7 and IWC Wage Order No. 16 provide that if an employer
19 fails to provide an employee with rest periods in accordance with those provisions, the
20 employer shall pay the employee one hour of pay at the employee's regular rate of
21 compensation for each workday that the rest periods were not so provided.

22 89. At all times relevant hereto, Plaintiff and members of the Class have worked 8
23 hours daily.

24 90. At all times relevant hereto, Defendant failed to provide rest periods as required
25 by Labor Code § 226.7 and Wage Order No. 16. Plaintiff and Class members' were not
26 afforded any rest breaks.

27 //

28 //

91. Defendant has intentionally and improperly denied compliant rest periods to Plaintiff and the Class in violation of Labor Code § 226.7 and Wage Order No. 16. As a result, all rest breaks were on duty.

92. By virtue of Defendant's unlawful failure to provide compliant rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

FIFTH CAUSE OF ACTION

FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE

ITEMIZED STATEMENTS

(Labor Code §226 By Plaintiff Against Defendant and Does 1 through 100)

93. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

94. Pursuant to IWC Wage Order No. 16, Defendant was the employer of Plaintiff and the Class.

95. Pursuant to California Labor Code sections 226 and 1174, and Wage Order No. 16, section 7, Defendant is required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

96. Defendant is further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the employee is being paid; (5) the name of the employee; and (6) the name and address of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

97. Section 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay periods

1 in which the employer knowingly and intentionally failed to provide accurate itemized
2 statements to the employee causing the employee to suffer injury.

3 98. Notwithstanding these provisions. Defendant has engaged in a uniform practice
4 of refusing to maintain and provide the accurate records and wage statements required by
5 California law.

6 99. Throughout the Class Period, Defendant intentionally and knowingly provided
7 Plaintiff and other members of the Class with weekly itemized wage statements containing
8 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
9 that the payments owed to Plaintiff and the members of the Class for overtime/double time
10 compensation, minimum wages, on duty meal/rest periods and sick pay were not included in
11 gross wages earned by Plaintiff and members of the Class.

12 100. As a result, Plaintiff and members of the Class have been injured by having been
13 deprived of the true facts pertaining to their compensation and employment.

14 101. Plaintiff and members of the Class were damaged by these failures because,
15 among other things, the failures led them to believe that they were not entitled to
16 overtime/double time compensation, minimum wages, pay for meal/rest periods not properly
17 provided and sick pay, even though they were so entitled and these failures hindered them from
18 determining the amounts of wages owed to them.

19 102. Plaintiff and members of the Class are entitled to the amounts provided in Labor
20 Code §226(e), plus attorneys' fees and costs.

21 103. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
22 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
23 provided by law for Defendant's improper conduct.

24 **SIXTH CAUSE OF ACTION**

25 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

26 **(Labor Code §§201-203 By Plaintiff against Defendant and Does 1 through 100)**

27 104. Plaintiff and the Class reallege and incorporate by reference all of the allegations
28 set forth in this Complaint.

1 105. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
2 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
3 from employment, unpaid wages are due and payable within 72 hours of resignation.

4 106. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
5 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
6 paid, not to exceed thirty days.

7 107. Plaintiff and the Class were discharged and/or resigned from Defendant's
8 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

9 108. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's
10 wages for each day he or she was not timely paid, not to exceed 30 days' wages.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 **(Labor Code §2802 By Plaintiff against Defendant and Does 1 through 100)**

14 109. Plaintiff and the Class reallege and incorporate by reference all of the allegations
15 set forth in this Complaint.

16 110. Labor Code §2802 requires employers to indemnify employees for all necessary
17 expenditures incurred by employees in the discharge of their duties.

18 111. At all times relevant herein, Defendant was aware that Plaintiff and Class
19 members were using their personal cell phones and vehicles for business, but failed to
20 indemnify Plaintiff and Class members for all their business-related expenses, including wear
21 and tear expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and
22 thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing
23 Plaintiff and Class members for their work-related expenses that they incurred in using their
24 cell phones and vehicles for work-related purposes.

25 112. As a result of Defendant's conduct, Plaintiff and Class Members suffered
26 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
27 business-related expenses incurred in the discharge of their duties.

28

1 113. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
2 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
3 costs of suit.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE**

6 **(Cal. Labor Code §§201-204, 218, 218.5, 233, 245, 246 et. seq. By Plaintiff Against**
7 **Defendant and Does 1 through 100)**

8 114. Plaintiff and the Class reallege and incorporate by reference all of the allegations
9 set forth in this Complaint.

10 115. Section 246 (1) requires that employers pay sick time pay to non-exempt
11 employees at the employee's "regular rate of pay." Employers must calculate paid sick leave for
12 nonexempt employees (1) "in the same manner as the regular rate of pay for the workweek in
13 which the employee uses paid sick time, whether or not the employee actually works overtime
14 in that workweek" or (2) "by dividing the employee's total wages, not including overtime
15 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
16 of employment."

17 116. The "regular rate of pay" includes all remuneration for employment paid to the
18 employee with the exception of overtime pay and includes, but is not limited to base hourly
19 wages, shift differentials and other forms of non-discretionary wages.

20 117. Defendant failed to properly calculate and pay Plaintiff and Class members sick
21 pay wages.

22 118. California law also requires that any compensation, including a shift differential
23 be included in the sick pay rate of pay. Defendant failed to blend shift differentials when
24 calculating Plaintiff and Class members' regular rate in workweeks when they earned sick
25 pay. As such, Plaintiff and Class members were paid at a sick pay rate less than the rate
26 required under California law.

27 //

28 //

1 119. Plaintiff and Class members earned shift differentials when working night shifts.
2 However, those shift differentials were not blended into their sick pay rate for purposes of
3 calculating sick pay.

4 120. Moreover, Section 204 provides that wages are generally due and payable no later
5 than seven days after the end of a pay period or at least twice during each calendar month, on
6 days designated in advance as the regular paydays. Section 201 provides if an employer
7 discharges an employee, the wages earned and unpaid at the time of discharge are due and
8 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid
9 wages no later than 72 hours after an employee quits his or her employment, unless the employee
10 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case
11 the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if
12 an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then
13 the wages of the employee shall continue as a penalty from the due date, and at the same rate
14 until paid, but the wages shall not continue for more than thirty (30) days.

15 121. Because Defendant did not pay Plaintiff and members of the Class all owing and
16 underpaid sick pay wages, Defendant violated Sections 201-204, 246, and other Labor Code
17 sections. Defendant willfully failed to timely pay Plaintiff and members of the Class all their
18 wages due during employment and failed to timely pay all their wages due upon the termination
19 of their employment within the times prescribed by the Labor Code and is therefore subject to
20 applicable penalties, including a waiting time penalty, for each day, up to a thirty (30) day
21 maximum, pursuant to Section 203.

22 122. Labor Code section 233 provides: "Any employer who provides sick leave for
23 employees shall permit an employee to use in any calendar year the employee's accrued and
24 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
25 during six months at the employee's then current rate of entitlement, for the reasons specified in
26 subdivision (a) of Section 246.5."

27 123. During the relevant time period, Defendant intentionally and willfully failed to
28 pay Plaintiff and members of the Class their sick pay wages at the regular rate including shift

1 differentials of pay required by law. Accordingly, Plaintiff and members of the Class did not
2 receive the full amount of paid sick time that they were entitled to receive by law, and were
3 therefore denied the right to use sick leave within the meaning of Labor Code Sections 233(a)
4 and (c).

5 124. Any employer who violates Labor Code section 233 is liable to employees for
6 the greater of one day's pay or actual damages, reasonable equitable relief, and reasonable
7 attorneys' fees and costs. Lab. Code sections 233(d), (e).

8 125. Labor Code section 218 authorizes a private right of action to recover unpaid
9 wages, including under sections 204 and 233.

10 126. Pursuant to Labor Code sections 218 and 218.5, Plaintiff and members of the
11 Class are entitled to recover the full amount of their unpaid wages, applicable penalties,
12 prejudgment interest on the amount of their unpaid wages, reasonable attorneys' fees and costs
13 of suit.

14 **NINTH CAUSE OF ACTION**

15 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

16 ***(Labor Code §1198.5 By Plaintiff Against Defendant and Does 1 through 100)***

17 127. Plaintiff and the Class reallege and incorporate by reference all of the allegations
18 set forth in this Complaint.

19 128. California Labor Code Section 1198.5 provides:

- 20
- 21 (a) Every current and former employee, or his or her representative, has the
22 right to inspect and receive a copy of the personnel records that the
23 employer maintains relating to the employee's performance or to any
24 grievance concerning the employee.
- 25 (b) The employer shall make the contents of those personnel records available
26 for inspection to the current or former employee, or his or her
27 representative, at reasonable intervals and at reasonable times, but not later
28 than 30 calendar days from the date the employer receives a written request,
unless the current or former employee, or his or her representative, and the
employer agree in writing to a date beyond 30 calendar days to inspect the
records, and the agreed-upon date does not exceed 35 calendar days from
the employer's receipt of the written request to inspect the records. Upon a

1 written request from a current or former employee, or his or her
2 representative, the employer shall also provide a copy of the personnel
3 records,..... later than 30 calendar days from the date the employer receives
4 the request...

5 (k) If an employer fails to permit a current or former employee, or his or her
6 representative, to inspect or copy personnel records within the times specified I
7 this section... the current or former employee may recover a penalty of seven
8 hundred fifty dollars (\$750) from the employer.

9 (1) A current or former employee may also bring an action for injunctive relief
10 to obtain compliance with this section, and may recover costs and reasonable
11 attorney's fees in such an action.

12 129. Additionally, pursuant to IWC Wage Order No. 16, at section 7 re: Records,
13 employers are required to keep accurate payroll records on each employee, and such records
14 must be made readily available for inspection by the employee upon reasonable request. The
15 employer must also maintain accurate production records.

16 130. On or about August 15, 2025, Plaintiff's counsel issued a written request to
17 Defendant for copies of his personnel records.

18 131. Under California Labor Code Sections 226, 432 and 1198.5, such records were
19 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
20 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
21 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
22 records.

23 132. As a direct result and consequence of Defendant's failure and refusal to permit
24 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
25 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
26 result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
27 penalty of \$750 based upon Defendant's violation of §1198.

28 **TENTH CAUSE OF ACTION**

UNFAIR COMPETITION

**(Business & Professions Code §§ 17200 *et seq.* By Plaintiff Against Defendant and Does 1
through 100)**

1 133. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 134. Pursuant to IWC Wage Order No. 16, Defendant was the employer of Plaintiff
4 and the Class. Defendant is also a "person" as that term is defined in Business & Professions
5 Code §17021.

6 135. The Business & Professions Code defines unfair competition as any unlawful,
7 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
8 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
9 Plaintiff and the Class overtime/double time compensation; (2) pay minimum wages; (3) pay
10 Plaintiff and the Class for meal periods improperly afforded, (4) pay Plaintiff and the Class for
11 rest periods improperly afforded, (5) furnish Plaintiff and the Class with accurate itemized
12 wage statements, as mandated by the applicable Labor Code and Industrial Welfare
13 Commission requirements, (6) pay all wages on termination, (7) pay sick pay, (8) reimburse
14 business expenses, and (9) provide personnel records, all in violation of Business & Professions
15 Code §§ 17200 *et seq.*

16 136. By and through the unfair and unlawful business practices described herein,
17 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
18 and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of
19 Plaintiff and the Class.

20 137. All the acts described herein are violations of, among other things, the Labor
21 Code and Industrial Commission Wage Order No. 16, are unlawful and in violation of public
22 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
23 constitute unfair and unlawful business practices in violation of Business & Professions Code
24 §§ 17200 *et seq.*

25 138. Plaintiff and the Class are entitled to, and do, seek such relief as may be
26 necessary to restore to them the money and property which Defendant has acquired, or of
27 which Plaintiff and the Class have been deprived by means of the above-described unfair and
28 unlawful business practices.

139. Plaintiff and the Class are further entitled to, and do, seek a declaration that the above-described business practices are unfair and unlawful and that injunctive relief should be issued restraining Defendant from engaging in any of the above described unfair and unlawful business practices in the future.

140. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of the unfair and unlawful business practices of Defendant. As a result of the unfair and unlawful business practices described above, Plaintiff and the Class have suffered and will continue to suffer irreparable harm unless Defendant is restrained from continuing to engage in these unfair and unlawful business practices. In addition, Defendant should be required to disgorge the unpaid moneys to Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor and against Defendant as follows:

1. For compensatory damages in the amount of unpaid overtime/double time due to Plaintiff and Class members, according to proof;

2. For compensatory damages in the amount of minimum wages due to Plaintiff and Class members, according to proof;

3. For payment of unpaid wages in accordance with California labor and employment law;

4. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class members for each workday that a meal period was not properly provided;

5. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class members for each workday that a rest period was not properly provided;

6. For compensatory damages in the amount of Plaintiff and Class members' cell phone and vehicle for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

7. For sick pay;

1 8. For an award of consequential damages in Plaintiff and Class members' favor
2 and against Defendant, in an amount to be proven at trial;

3 9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

4 10. For payment to Plaintiff and Class members of waiting time penalties pursuant
5 to *Cal. Lab. Code* §203, in an amount equal to their respective daily rates of pay at the time of
6 termination or layoff, multiplied by the total amount of days elapsed between the date of the
7 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
8 maximum of 30 days' pay, according to proof;

9 11. For specific relief enforcing waiting time penalties of 30 days of per diem wages
10 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

11 12. For prejudgment interest accrued on all due and unpaid overtime/double time
12 and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab.*
13 *Code* §§218.6 and 1194(a), according to proof;

14 13. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
15 according to proof;

16 14. For civil penalties pursuant to *Cal. Labor Code* §1198 and Wage Order No. 16;

17 15. For reasonable costs, including attorneys' fees, in an amount according to proof
18 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of*
19 *Civ. Proc.* §1021.5;

20 16. For an award of restitution of wages to Plaintiff and Class members in an
21 amount equal to the amount of wages owed and unpaid, according to proof;

22 17. For injunctive relief requiring Defendant to comply with Labor Code
23 1198.5(b)(1);

24 18. For injunctive relief ordering the continuing unfair business acts and practices to
25 cease, as the Court deems just and proper;

26 19. For other injunctive relief ordering Defendant to notify Plaintiff and Class
27 members that they have not been paid the proper amounts in accordance with California law;

28 20. For punitive and exemplary damages in a sum to be determined at trial; and

1 21. For such other and further relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff Juan Lopez Serna hereby respectfully requests a trial by jury for all claims and
4 issues raised in his Complaint that may be entitled to a jury trial.

6 LIPELES LAW GROUP, APC

7 Date: August 15, 2025

8
9 By:  _____

10 Kevin A. Lipeles
11 Attorneys for Plaintiff
12 Juan Lopez Serna