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David W. Slayton,
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Attorneys for Plaintiff OCTAVIO MERCADO,
on behalf of himself and all others similarly situated

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

OCTAVIO MERCADO, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

AJF ENTERPRISES, LLC D/B/A VIPER
EQUIPMENT, a California Limited Liability
Company; ANASTASIOS FISTES, an
individual; and DOES 1 through 100,
inclusive.

Defendants.

CASE NO.: **26STCV01341**

**CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ. FOR:**

1. FAILURE TO PAY OVERTIME WAGES
2. FAILURE TO PAY MINIMUM WAGES
3. FAILURE TO PROVIDE MEAL PERIODS
4. FAILURE TO PROVIDE REST AND
RECOVERY PERIODS
5. WAITING TIME PENALTIES
6. FAILURE TO PAY TIMELY WAGES
7. WAGE STATEMENT VIOLATIONS
8. FAILURE TO INDEMNIFY
9. PENALTIES PURSUANT TO LABOR
CODE § 2699, ET SEQ.; and
10. UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$35,000.00]

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COMES NOW, Plaintiff OCTAVIO MERCADO (“Plaintiff”), on behalf of himself and all others similarly situated, and alleges as follows:

INTRODUCTION

1. This is a Class and Representative Action, pursuant to Code of Civil Procedure section 382 against AJF ENTERPRISES, LLC D/B/A VIPER EQUIPMENT, (“AJF” or the “Company”), ANASTASIOS FISTES (“A. Fistes”), and any of their respective subsidiaries or affiliated companies within the State of California (the Company, A. Fistes, and DOES 1 through 100, as further defined below, hereinafter, collectively, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members” and/or “Aggrieved Employees”).

PARTIES

A. Plaintiff

2. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, securing and delivering equipment, washing equipment in the track yard, sweeping and cleaning the facility, organizing the paint trailers, and unloading containers filled with fencing materials within the state of California. Plaintiff is informed and believes and based thereon alleges that Plaintiff worked for Defendants from approximately June 2023 through approximately November 2024.

B. Defendants

3. Plaintiff is informed and believes and based thereon alleges that defendant AJF is, and at all times relevant hereto, a California Limited Liability Company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes and based thereon alleges that defendant A. Fistes is, and at all times relevant hereto was, an individual residing in California, as well as an Owner or Co-Owner for AJF, and DOES 1 through 100, as further defined below. Plaintiff is further informed and believes and based thereon alleges that A. Fistes violated, or caused to be violated, the above-

1 referenced and below-referenced Labor Code provisions in violation of Labor Code section 558.1.

2 5. The true names and capacities, whether individual, corporate, associate, or otherwise,
3 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
4 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
5 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
6 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
7 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
8 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
9 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
10 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
11 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
12 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
13 include the Company, A. Fistes, and any of their parent, subsidiary, or affiliated companies within
14 the State of California, as well as DOES 1 through 100 identified herein.

15 **JOINT LIABILITY ALLEGATIONS**

16 6. Plaintiff is informed and believes and based thereon alleges that all the times
17 mentioned herein, each of the Defendants were the agent, principal, employee, employer,
18 representative, joint venture or co-conspirator of each of the other defendants, either actually or
19 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
20 employment, joint venture, and conspiracy.

21 7. All of the acts and conduct described herein of each and every corporate defendant
22 was duly authorized, ordered, and directed by the respective and collective defendant corporate
23 employers, and the officers and management-level employees of said corporate employers. In
24 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
25 their said employees, agents, and representatives, and each of them; and upon completion of the
26 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
27 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
28 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the

1 aforementioned corporate employees, agents and representatives.

2 8. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
3 unity of interest and ownership between Defendants, and each of them, that their individuality and
4 separateness have ceased to exist.

5 9. Plaintiff is informed and believes, and based thereon alleges that despite the
6 formation of the purported corporate existence of AJF, and DOES 1 through 50, inclusive (the “Alter
7 Ego Defendants”), they, and each of them, are one and the same with A. Fistes, and DOES 51
8 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
9 reasons:

10 a. The Alter Ego Defendants are completely dominated and controlled by the
11 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
12 as set forth in this Complaint, and who has hidden and currently hide behind the Alter Ego
13 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
14 inequitable purpose;

15 b. The Individual Defendants derive actual and significant monetary benefits
16 by and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants
17 as the funding source for the Individual Defendants’ own personal expenditures;

18 c. Plaintiff is informed and believes and thereon alleges that the Individual
19 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
20 as though separate and distinct for purposes of perpetrating fraud, circumventing a statute, or
21 accomplishing some other wrongful or inequitable purpose;

22 d. Plaintiff is informed and believes and thereon alleges that the business
23 affairs of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times
24 mentioned herein were, so mixed and intermingled that the same cannot reasonably be segregated,
25 and the same are inextricable confusion. The Alter Ego Defendants are, and at all relevant times
26 mentioned herein were, used by the Individual Defendants as mere shells and conduits for the
27 conduct of certain of their, and each of their affairs. The Alter Ego Defendants are, and at all relevant
28 times mentioned herein were, the alter egos of the Individual Defendants;

1 e. The recognition of the separate existence of the Individual Defendants and
2 the Alter Ego Defendants would promote injustice insofar that it would permit defendants to
3 insulate themselves from liability to Plaintiff for violations of the California Government Code,
4 Civil Code, Labor Code, and other statutory violations. The corporate existence of these defendants
5 should thus be disregarded in equity and for the ends of justice because such disregard is necessary
6 to avoid fraud and injustice to Plaintiff, and all other similarly situated employees, herein;

7 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
8 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must
9 be disregarded;

10 g. As a result of the aforementioned facts, among others, Plaintiff is informed
11 and believes, and based thereon alleges that the Individual Defendants, the Alter Ego Defendants,
12 and each of them, are joint employers by virtue of a joint enterprise, and that Plaintiff was an
13 employee of the Alter Ego Defendants and the Individual Defendants. Plaintiff performed services
14 for each and every defendant, and to the mutual benefit of all defendants, and all defendants shared
15 control of Plaintiff and all other similarly situated employees, either directly or indirectly, and in the
16 manner in which defendants' business was and is conducted.

17 10. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
18 thereon alleges that Defendants, and each of them, are joint employers.

19 **JURISDICTION**

20 11. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
21 of Civil Procedure section 410.10.

22 12. Venue is proper in County of Los Angeles, California pursuant to Code of Civil
23 Procedure sections 392, et seq. because, among other things, County of Los Angeles is where the
24 causes of action complained of herein arose; the county in which the employment contract, or part
25 of it, between Plaintiff, Class Members, and/or Aggrieved Employees, or some of them, and
26 Defendants was due to be performed; the county in which the employment contract, or part of it,
27 between Plaintiff, Class Members, and/or Aggrieved Employees, or some of them, and Defendants
28 was actually performed. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff,

1 Class Members, and/or Aggrieved Employees in County of Los Angeles, and because Defendants
2 employ numerous Class Members and/or Aggrieved Employees in Los Angeles County.

3 **FACTUAL BACKGROUND**

4 13. For at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to pay overtime wages to Plaintiff, Class Members, and/or
6 Aggrieved Employees, or some of them, in violation of California state wage and hour laws as a
7 result of, without limitation, Plaintiff, Class Members, and/or Aggrieved Employees worked over
8 eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week
9 without being properly compensated for hours worked in excess of (8) hours per day in a work day,
10 forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work
11 day in a work week by, among other things, Defendants had, and continue to have, a company-wide
12 policy and practice discouraging and impeding employees from recording hours worked that were
13 outside of their scheduled shifts in order to limit the amount of overtime employees could accrue.
14 On information and belief, this policy of limiting overtime, coupled with Defendants' practices of
15 understaffing and assigning heavy workloads led Plaintiff, Class Members, and/or Aggrieved
16 Employees to work off the clock outside of their scheduled shift times to complete their assigned
17 tasks; and were pressured to work through meal and/or rest periods and/or Defendants manipulated
18 time entries to show that compliant meal periods were provided. Further, Defendants would make
19 calls and send text messages to communicate with employees throughout the week to discuss work
20 schedules, assignments, and other matters without proper remuneration. Defendants' failure to
21 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay was to
22 the detriment of Plaintiff, Class Members, and/or Aggrieved Employees. As such, Defendants did
23 not account for all the time worked by Plaintiff, Class Members, and/or Aggrieved Employees when
24 calculating the number of hours worked to determine how many hours of overtime wages were and
25 are owed.

26 14. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendants have failed to pay minimum wages to Plaintiff and Class Members, or some of
28 them, in violation of California state wage and hour laws as a result of, among other things, failing

1 to accurately track and/or pay for all hours actually worked at their regular rate of pay for work that
2 was required to be done off-the-clock to the detriment of Plaintiff and Class Members, and failing
3 to provide compliant off-duty meal periods for the reasons discussed above. Furthermore,
4 Defendants systematically rounded down Plaintiff, Class Members, and/or Aggrieved Employees
5 total hours worked, thereby reducing compensable time and underpaying employees.

6 15. For at least four (4) years prior to the filing of this Action and continuing to the
7 present, Defendants have failed to provide Plaintiff, Class Members, and/or Aggrieved Employees,
8 or some of them, full, timely thirty (30) minute uninterrupted meal period for days on which they
9 worked more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal
10 period for days on which they worked in excess of ten (10) hours in a work day, and failed to provide
11 compensation for such unprovided meal periods as required by California wage and hour laws due
12 to, without limitation, Defendants had, and continue to have, company-wide policies and/or
13 practices of understaffing its facilities, such that there were too few employees on duty to handle
14 the workload, which resulted in a failure to provide Plaintiff, Class Members, and/or Aggrieved
15 Employees with adequate meal period coverage, failing to authorize a complaint meal period,
16 pressuring Plaintiff, Class Members, and/or Aggrieved Employees to clock-out for meal periods and
17 continue working without receiving a complaint meal period, and by interrupting meal periods to
18 discuss work related activities, or requesting to return from meal periods early, and managers and/or
19 supervisors edited and/or manipulated employees' time entries to show less hours than actually
20 worked by editing time to demonstrate that compliant meal periods were provided.

21 16. For at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendants have failed to authorize and permit Plaintiff, Class Members, and/or Aggrieved
23 Employees, or some of them, to take rest periods of at least ten (10) minutes per four (4) hours
24 worked or major fraction thereof and failed to provide compensation for such unprovided rest
25 periods as required by California wage and hour laws due to, without limitation, failing to authorize
26 a compliant rest period, pressuring Plaintiff, Class Members, and/or Aggrieved Employees to
27 continue to work through their rest periods.

28 17. For at least four (4) years prior to the filing of this action and continuing to the

1 present, Defendants have failed to provide Plaintiff, Class Members, and/or Aggrieved Employees,
2 or some of them, full, authorized cooldown rest periods in the shade as required under California
3 Code of Regulations, Title 8, section 3395 *et seq.*, due to, without limitation, pressuring employees
4 to continue to work without any cooldown recovery periods in the shade to protect themselves from
5 overheating.

6 18. For at least three (3) years prior to the filing of this action and continuing to the
7 present, Defendants have failed to pay Plaintiff, Class Members, and/or Aggrieved Employees, or
8 some of them, the full amount of their wages owed to them upon termination and/or resignation as
9 required by Labor Code sections 201, 202, and 203 including for, without limitation, Defendants'
10 failing to pay overtime wages, minimum wages, and premium wages as discussed above.

11 19. For at least three (3) years prior to the filing of this action and continuing to the
12 present, Defendants have failed to pay Plaintiff, Class Members, and/or Aggrieved Employees the
13 full amount of their wages owed as required by Labor Code section 204. Labor Code section 204
14 expressly requires employers who pay employees on a weekly, biweekly, or semimonthly basis to
15 pay all wages "not more than seven calendar days following the close of payroll period." Due to
16 Defendants' failure to pay Plaintiff and Class Members all overtime, minimum wage compensation,
17 and meal and rest period premiums as described above, Defendants failed to timely pay its
18 employees within seven calendar days following the close of payroll on a regular and consistent
19 basis. Furthermore, Labor Code section 210 provides that "in addition to, an entirely independent
20 and apart from, any other penalty provided in this article, every person who fails to pay the wages
21 of each employee as provided in sections ... 204 ... shall be subject to a civil penalty as follows: (1)
22 for any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for
23 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
24 each failure to pay each employee, plus 25% of the amount unlawfully withheld."

25 20. For at least three (3) years prior to the filing of this action and continuing to the
26 present, Defendants have failed to indemnify Plaintiff, Class Members, and/or Aggrieved
27 Employees, or some of them, for the costs incurred in the use of cellular phones for work-related
28 purposes, including being required to install an app called "Time Tree."

21. For at least three (3) year prior to the filing of this Action and continuing to the present, Defendants have failed to furnish Plaintiff, Class Members, and/or Aggrieved Employees, or some of them, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the name and address of the legal entity that is the employer, and other such information as required by Labor Code section 226, subdivision (a). As a result thereof, Defendants have failed to furnish employees with an accurate calculation of gross and gross wages earned, as well as gross and net wages paid, and other information described herein.

22. Plaintiff, on his own behalf and on behalf of Class Members and/or Aggrieved Employees, brings this action pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 *et al.*, 2802, 2810.5, applicable Wage Order(s), and California Code of Regulations, Title 8, section 3395 *et seq.*, seeking overtime wages, minimum wages, payment of premium wages for missed meal, rest, and recovery periods, waiting time penalties, wage statement penalties, failure to indemnify, other such provisions of California law, and reasonable attorneys' fees and costs.

23. Plaintiff, on his own behalf and on behalf of Class Members and/or Aggrieved Employees, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff, Class Members, and/or Aggrieved Employees are entitled, as well as restitution of amounts owed.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. The Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time and at any location commencing four (4) years preceding the filing of Plaintiff's complaint up until

1 the time that notice of the class action is provided to Class Members.

2 25. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
3 to amend or modify the class description with greater specificity, further divide the defined class
4 into subclasses, and to further specify or limit the issues for which certification is sought.

5 26. This action has been brought and may properly be maintained as a class action under
6 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
7 of interest in the litigation and the proposed Class is easily ascertainable.

8 **A. Numerosity**

9 27. The potential Class Members as defined are so numerous that joinder of all the
10 members of the Class is impracticable. While the precise number of Class Members has not been
11 determined yet, Plaintiff is informed and believes that there are over fifty (50) Class Members
12 employed or formerly employed by Defendants within the State of California.

13 28. Accounting for employee turnover during the relevant periods necessarily increases
14 this number. Plaintiff alleges Defendants' employment records would provide information as to the
15 number and location of all Class Members. Joinder of all members of the proposed Class is not
16 practicable.

17 **B. Commonality**

18 29. There are questions of law and fact common to Class Members. These common
19 questions include, but are not limited to:

- 20 A. Did Defendants violate California Labor Code and IWC Wage Order(s) by failing to
21 pay wages to Plaintiff and Class Members for all hours worked?
- 22 B. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
23 worked at a proper overtime rate of pay?
- 24 C. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
25 for all other time worked at the employee's regular rate of pay and a rate of pay that
26 is greater than the applicable minimum wage?
- 27 D. Did Defendants violate Labor Code section 512 by not authorizing or permitting
28 Plaintiff and Class Members to take compliant meal periods?

- 1 E. Did Defendants violate Labor Code section 226.7 by not providing Plaintiff and
2 Class Members with additional wages for missed or interrupted meal periods?
- 3 F. Did Defendants violate applicable Wage Orders by not authorizing or permitting
4 Plaintiff and Class Members to take compliant rest periods?
- 5 G. Did Defendants violate Labor Code section 226.7 by not providing Plaintiff and
6 Class Members with additional wages for missed or interrupted rest periods?
- 7 H. Did Defendants violate California Code of Regulations, Title 8, Section 3395 by
8 failing to permit Plaintiff and Class Members from taking cooldown rest periods in
9 the shade?
- 10 I. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Plaintiff
11 and Class Members upon termination or resignation all wages earned?
- 12 J. Are Defendants liable to Plaintiff and Class Members for waiting time penalties
13 under Labor Code section 203?
- 14 K. Did Defendants violate Labor Code section 204 by failing to pay Plaintiff and Class
15 Members timely wages during their employment?
- 16 L. Are Defendants liable to Plaintiff and Class Members for penalties under Labor Code
17 section 210?
- 18 M. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
19 Plaintiff and Class Members with accurate wage statements?
- 20 N. Did Defendants fail to indemnify Class Members for all necessary expenditures or
21 losses incurred in direct consequence of the discharge of their duties or by obedience
22 to the directions of Defendants as required under Labor Code section 2802?
- 23 O. Did Defendants fail to provide written notice of information material to Plaintiff's
24 and Class Members' employment with Defendants in violation of Labor Code
25 section 2810.5?
- 26 P. Did Defendants violate the Unfair Competition Law, Business and Professions Code
27 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 28 Q. Whether Defendants are liable for penalties under Labor Code section 2699, *et seq.*?

1 R. Are Class Members entitled to restitution of wages under Business and Professions
2 Code section 17203?

3 S. Are Class Members entitled to costs and attorneys' fees?

4 T. Are Class Members entitled to interest?

5 **C. Typicality**

6 30. The claims of Plaintiff herein alleged are typical of those claims which could be
7 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
8 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
9 damages arising out of and caused by Defendants' common course of conduct in violation of laws
10 and regulations that have the force and effect of law and statutes as alleged herein.

11 **D. Adequacy of Representation**

12 31. Plaintiff will fairly and adequately represent and protect the interest of Class
13 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
14 hour class actions.

15 **E. Superiority of Class Action**

16 32. A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
18 questions of law and fact common to Class Members predominate over any questions affecting only
19 individual Class Members. Class Members, as further described therein, have been damaged and
20 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
21 violation of the Labor Code as set out herein.

22 33. Class action treatment will allow Class Members to litigate their claims in a manner
23 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
24 any difficulties that are likely to be encountered in the management of this action that would
25 preclude its maintenance as a class action.

26 **FIRST CAUSE OF ACTION**

27 **(Failure to Pay Overtime Wages – Against All Defendants)**

28 34. Plaintiff re-alleges and incorporates by reference the allegations contained in the

1 preceding paragraphs as though fully set forth herein.

2 35. At all relevant times, Plaintiff and Class Members were employees or former
3 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
4 Wage Order(s).

5 36. At all times relevant to this Complaint, Labor Code section 510 was in effect and
6 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
7 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
8 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

9 37. At all times relevant to this Complaint, Labor Code section 510 further provided that
10 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
11 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
12 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
13 pay.”

14 38. Four (4) years prior to the filing of the Complaint in this Action through the present,
15 Plaintiff and Class Members, worked for Defendants during shifts that consisted of more than eight
16 (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive
17 workdays in a workweek, without being paid overtime wages for all hours worked as a result of,
18 including but not limited to, Defendants failing to accurately track and/or pay for all hours actually
19 worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members, as
20 discussed in detail above.

21 39. Accordingly, by requiring Plaintiff and Class Members to work greater than eight (8)
22 hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without
23 properly compensating overtime wages at the proper overtime rate of pay, Defendants, willfully
24 violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC
25 Wage Order(s), and California law.

26 40. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
27 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
28 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194

1 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

2 **SECOND CAUSE OF ACTION**

3 **(Failure to Pay Minimum Wages – Against All Defendants)**

4 41. Plaintiff re-alleges and incorporates by reference the allegations contained in the
5 preceding paragraphs as though fully set forth herein.

6 42. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage
8 Order(s).

9 43. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
10 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
11 Defendants' control.

12 44. For four (4) years prior to the filing of the Complaint in this Action through the
13 present, Defendants failed to accurately track and/or pay for all hours actually worked at their
14 regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members
15 as discussed in detail above.

16 45. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
17 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
18 for all hours worked or otherwise due.

19 46. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
20 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
21 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
22 damages, reasonable attorneys' fees and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **(Failure to Provide Meal Periods – Against All Defendants)**

25 47. Plaintiff re-alleges and incorporates by reference the allegations contained in the
26 preceding paragraphs as though fully set forth herein.

27 48. At all relevant times, Plaintiff and Class Members were employees or former
28 employees of Defendants covered by Labor Code section 512 and applicable Wage Order(s).

1 49. Pursuant to Labor Code section 512 and applicable Wage Order(s), no employer shall
2 employ an employee for a work period of more than five (5) hours without a timely meal break of
3 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
4 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
5 per day without providing the employee with a second timely meal period of not less than thirty (30)
6 minutes in which the employee is relieved of all of his or her duties.

7 50. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
8 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
9 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
10 of compensation for each workday that the meal period is not provided.

11 51. For four (4) years prior to the filing of the Complaint in this Action through the
12 present, Plaintiff and Class Members were not provided complete, timely 30-minute, duty-free
13 uninterrupted meal periods every five hours of work without waiving the right to take them, as
14 permitted. Moreover, Defendants failed to provide one (1) additional hour of pay at the Class
15 Member's regular rate of compensation when Class Members were not provided compliant meal
16 periods.

17 52. By their failure to provide Plaintiff and Class Members compliant meal periods as
18 contemplated by Labor Code section 512, among other California authorities, and failing, to provide
19 compensation for such unprovided meal periods, as alleged above, Defendants willfully violated the
20 provisions of Labor Code section 512 and applicable Wage Orders.

21 53. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
23 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

24 54. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
25 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
26 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
27 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

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1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Rest and Recovery Periods – Against All Defendants)**

3 55. Plaintiff re-alleges and incorporates by reference the allegations contained in the
4 preceding paragraphs as though fully set forth herein.

5 56. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by applicable Wage Orders.

7 57. California law and applicable Wage Order(s) require that employers “authorize and
8 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
9 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-
10 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
11 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
12 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
13 thirty (30) minutes of paid rest period.

14 58. Further, California Code of Regulations Title 8, section 3395 *et seq.*, requires that
15 employers, provide employees with full, authorized cooldown rest periods in the shade.

16 59. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
17 with a meal period or rest period or recovery period as provided in the applicable Wage Order(s) of
18 the Industrial Welfare Commission, California Code of Regulations Title 8, section 3395, the
19 employer shall pay the employee one (1) additional hour of pay at the employee’s regular rate of
20 compensation for each workday that the rest and/or recovery period is not provided.

21 60. For four (4) years prior to the filing of the Complaint in this Action through the
22 present, Plaintiff and Class Members were not authorized or permitted to take complete, timely,
23 duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof.
24 Moreover, Defendants failed to provide one (1) additional hour of pay at the Class Member’s regular
25 rate of compensation on the occasions that Class Members were not authorized or permitted to take
26 compliant rest periods.

27 61. By their failure, to authorize and permit Plaintiff and Class Members to take rest
28 and/or recovery periods contemplated by California law, and one (1) additional hour of pay at the

1 employee's regular rate of compensation for such unprovided rest periods, as alleged above,
2 Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage
3 Orders.

4 62. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
5 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
6 owed for rest periods that they were not authorized or permitted to take.

7 63. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
8 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus
9 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
10 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

11 **FIFTH CAUSE OF ACTION**

12 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

13 64. Plaintiff re-alleges and incorporates by reference the allegations contained in the
14 preceding paragraphs as though fully set forth herein.

15 65. At all relevant times, Plaintiff and Class Members were employees or former
16 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
17 Wage Orders.

18 66. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
19 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
20 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
21 discharge immediately upon termination. Class Members who resigned were entitled to payment
22 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
23 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
24 unpaid at the time of resignation.

25 67. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)
26 years before the filing of the Complaint in this Action through the present, Defendants, due to the
27 failure to provide overtime, minimum wages, mentioned above, failed to pay Plaintiff and Class
28 Members all wages earned including without limitation, premium wages prior to resignation or

1 termination in accordance with Labor Code sections 201 or 202.

2 68. Plaintiff is informed and believes Defendants' failure to pay Plaintiff and Class
3 Members all wages earned prior to termination or resignation in accordance with Labor Code
4 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
5 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
6 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
7 sections 201 and 202 resulting in the failure, on occasion, to pay all wages earned prior to
8 termination or resignation.

9 69. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
10 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
11 resignation, until paid, up to a maximum of thirty (30) days.

12 70. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
13 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
14 prior to termination or resignation.

15 71. Pursuant to Labor Code sections 201-203 and 218.6, Code of Civil Procedure
16 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
17 recover waiting time penalties, interest, and their costs of suit, as well.

18 **SIXTH CAUSE OF ACTION**

19 **(Failure to Pay All Wages Within a Timely Manner – Against All Defendants)**

20 72. Plaintiff re-alleges and incorporates by reference the allegations contained in the
21 preceding paragraphs as though fully set forth herein.

22 73. At all relevant times, Labor Code section 200 provides that "wages include all
23 amounts for labor performed by employees of every description, whether the amount is fixed or
24 ascertained by the standard of time, task, pieces, commission basis, or other method of calculation."

25 74. At all relevant times, Labor Code section 204 states that all wages earned by any
26 person in any employment are payable twice during the calendar month, and must be paid not more
27 than seven days following the close of the period when the wages were earned.

28 75. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code sections 204 and 210, as well as applicable Wage
2 Orders.

3 76. At all relevant times, Labor Code section 204 expressly required employers who pay
4 employees on a weekly, biweekly, or semi-monthly basis to pay all wages “not more than seven
5 calendar days following the close of the payroll period.” Due to Defendants’ failure to pay Plaintiff
6 and Class Members all minimum, or overtime wage compensation, and meal, rest, and/or recovery
7 period premiums as described above, Defendants failed to timely pay its employees within seven
8 calendar days following the close of payroll in accordance with Labor Code section 204 on a regular
9 and consistent basis.

10 77. As discussed in detail above, by failing to pay for all minimum and/or overtime
11 wages owed, and failing to pay meal, rest, and/or recovery premiums, among others discussed
12 above, Defendants failed to pay Plaintiff and Class Members at least twice per month in violation of
13 Labor Code section 204.

14 78. As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor
15 Code section 210.

16 **SEVENTH CAUSE OF ACTION**

17 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

18 79. Plaintiff re-alleges and incorporates by reference the allegations contained in the
19 preceding paragraphs as though fully set forth herein.

20 80. At all relevant times, Plaintiff and Class Members were employees or former
21 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

22 81. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
23 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
24 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
25 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
27 employer, among other things.

28 82. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) year

1 before the filing of the Complaint in this Action through the present, Defendants knowingly and
2 intentionally failed to comply with Labor Code section 226, subdivision (a) by adopting policies
3 and practices that resulted in their failure, on occasion, to furnish Plaintiff and Class Members with
4 accurate itemized statements that accurately reflect, among other things, gross wages earned; total
5 hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate; and the name and address of the legal
7 entity that is the employer, among other things.

8 83. Defendants' failure to, on occasion, provide Plaintiff and Class Members with
9 accurate wage statements was knowing, intentional, and willful. Defendants had the ability to
10 provide Plaintiff and the other Class Members with accurate wage statements, but, willfully
11 provided wage statements that Defendants knew were not accurate.

12 84. As a result of Defendants' occasional unlawful conduct, Plaintiff and Class Members
13 have suffered injury. The absence of accurate information on Class Members' wage statements has
14 delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
15 mathematical computations to determine the amount of wages owed; causes difficulty and expense
16 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
17 about wages and amounts deducted from wages to state and federal governmental agencies, among
18 other things.

19 85. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
20 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
21 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
22 pay period, not to exceed an aggregate \$4,000.00 per employee.

23 86. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
24 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
25 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
26 attorneys' fees, and costs of suit.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 2802 – Against All Defendants)**

3 87. Plaintiff re-alleges and incorporates by reference the allegations contained in the
4 preceding paragraphs as though fully set forth herein.

5 88. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

7 89. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
8 his or her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties . . .”

10 90. For three (3) years prior to the filing of the Complaint in this Action through the
11 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
12 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
13 obedience to the directions of Defendants that included, without limitation: using cellular phones in
14 furtherance of their work duties and being required to install an app called “Time Tree.”

15 91. During that time period, Plaintiff is informed and believes, and based thereon alleges,
16 that Defendants, at times, failed and refused, and still fail and refuse, on occasion, to reimburse
17 Plaintiff and Class Members for those losses and/or expenditures.

18 92. As a result of Defendants’ occasional unlawful conduct, Plaintiff and Class Members
19 have suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
20 herein-described losses and/or expenditures.

21 93. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
22 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
23 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
24 costs of suit.

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1 **NINTH CAUSE OF ACTION**

2 **(Penalties Pursuant To Labor Code Section 2699, *ET SEQ.* – Against All Defendants)**

3 94. Plaintiff re-alleges and incorporates by reference the allegations contained in the
4 preceding paragraphs as though fully set forth herein.

5 95. At all relevant times herein set forth, PAGA provides that any provision of law under
6 the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed
7 and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
8 Order(s) may, as an alternative, be received by Class Members or Aggrieved Employees in a civil
9 action brought on behalf of themselves and other current or former employees pursuant to
10 procedures outlined in California Labor Code section 2699.3.

11 96. Plaintiff and Class Members are Aggrieved Employees as defined under Labor Code
12 section 2699(c)(1) in that they suffered the violations alleged in this Complaint and were employed
13 by the alleged violators, Defendants.

14 97. Plaintiff seeks penalties under Labor Code sections 2698 and 2699 for Defendants'
15 violation of all Labor Code provisions included under Labor Code section 2699.5 and includes the
16 penalty provisions, without limitation, based on the following Labor Code sections: 200, 201, 202,
17 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1,
18 1198 *et al.*, 2802, 2810.5, applicable Wage Order(s), and California Code of Regulations, Title 8,
19 section 3395 *et seq.*

20 98. The penalties shall be allocated as follows: 65% to the Labor and Workforce
21 Development Agency (LWDA) and 35% to the affected employees.

22 99. Plaintiff and Class Members or Aggrieved Employees also seek any and all penalties
23 and remedies set forth in Labor Code section 558, which states:

- 24 a. Any employer or other person acting on behalf of an employer who violates, or
25 causes to be violated, a section of this chapter or any provision regulating hours and
26 days of work in any order of the Industrial Welfare Commission shall be subject to
27 a civil penalty as follows: (1) [f]or any initial violation, fifty dollars (\$50) for each
28 underpaid employee to an amount sufficient to recover underpaid wages. (2) [f]or
each subsequent violation, one hundred dollars (\$100) for each underpaid employee
for each pay period for which the employee was underpaid in addition to an amount
sufficient to recover underpaid wages. (3) [w]ages recovered pursuant to this section

1 shall be paid to the affected employee[s].

2 b. If upon inspection or investigation the Labor Commissioner determines that a person
3 had paid or caused to be paid a wage for overtime work in violation of any provision
4 of this chapter, any provision regulating hours and days of work in any order of the
5 Industrial Welfare Commission, or any applicable local overtime law, the Labor
6 Commissioner may issue a citation. The procedures for issuing, contesting, and
7 enforcing judgments for citations or civil penalties issued by the Labor
8 Commissioner for a violation of this chapter shall be the same as those set out
9 in Section 1197.1

10 c. The civil penalties provided for in this section are in addition to any other civil or
11 criminal penalty provided by law.

12 100. Labor Code section 226.3 provides that, “[a]ny employer who violates subdivision
13 (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
14 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
15 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
16 deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent
17 that Labor Code section 226.3 applies, Plaintiff and Class Members or Aggrieved Employees also
18 seek such penalties on.

19 101. Plaintiff has exhausted her administrative remedy by sending a certified letter to the
20 LWDA and Defendants postmarked on September 17, 2025. The LWDA has not provided notice
21 of its intent to investigate the alleged violations within sixty-five (65) calendar days of the postmark
22 date of the letters.

23 **TENTH CAUSE OF ACTION**

24 **(Unfair Competition – Against All Defendants)**

25 102. Plaintiff re-alleges and incorporates by reference the allegations contained in the
26 preceding paragraphs as though fully set forth herein.

27 103. Plaintiff is informed and believes and based thereon alleges that the unlawful conduct
28 of Defendants alleged herein constitutes unfair competition within the meaning of Business and
Professions Code section 17200. Due to their participation at times in unlawful business practices
in violation of the Labor Code, Defendants have gained a competitive advantage over other
comparable companies doing business in the State of California that comply with their obligations

1 to compensate employees in accordance with the Labor Code.

2 104. As a result of Defendants' occasional unfair competition as alleged herein, Plaintiff
3 and Class Members have suffered injury in fact and lost money or property.

4 105. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
5 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
6 Code and requiring the establishment of appropriate and effective means to prevent further
7 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
8 including interest thereon, in which they had a property interest and which Defendants nevertheless
9 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
10 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
11 by their failure to comply with the Labor Code.

12 106. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
13 Procedure section 1032 and interest under Civil Code section 3287.

14 **DEMAND FOR JURY TRIAL**

15 107. Plaintiff demands a trial by jury on all causes of action contained herein

16 **PRAYER**

17 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
18 against Defendants as follows:

- 19 A. An order certifying this case as a Class Action;
- 20 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
21 counsel as class counsel;
- 22 C. Damages for all wages earned and owed, including minimum, and/or overtime wages
23 under Labor Code sections 218.6, 510, 1194, 1197, and 1199;
- 24 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 25 E. Damages for unpaid premium wages from missed meal, rest, and/or recovery periods
26 under, among other Labor Code sections, 512 and 226.7, and California Code of
27 Regulations Title 8, section 3395;
- 28 F. Penalties for inaccurate wage statements under Labor Code section 226, subdivision

1 (e);

2 G. Waiting time penalties under Labor Code section 203;

3 H. Damages for failing to timely pay wages under Labor Code section 204 and penalties
4 pursuant to section 210;

5 I. Damages under Labor Code section 2802;

6 J. For penalties pursuant to Labor Code section 2698, 2699, *et seq.*, as may be proven;

7 K. Preliminary and permanent injunctions prohibiting Defendants from further violating
8 the California Labor Code and requiring the establishment of appropriate and
9 effective means to prevent future violations;

10 L. Restitution of wages and benefits due which were acquired by means of any unfair
11 business practice, according to proof;

12 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

13 N. For attorneys' fees in prosecuting this action;

14 O. For costs of suit incurred herein; and

15 P. For such other and further relief as the Court deems just and proper.

16 Dated: January 13, 2026

MIRACLE MILE LAW GROUP, LLP

17
18 BY: 

STEVEN I. AZIZI

SEVADA HAKOPIAN

19
20 Attorneys for Plaintiff OCTAVIO MERCADO, on
21 behalf of himself and all others similarly situated
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