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

ANGEL RIVERA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MEKANISM, INC, a domestic corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 23STCV05698
[The Hon. Laura A. Seigle, Dept 17]

SECOND AMENDED COMPLAINT

- (1) Failure to Pay All Overtime Wages
- (2) Failure to Pay All Premium Wages
- (3) Failure to Provide Accurate Wage Statements
- (4) Failure to Pay All Wages Due and Owing On Separation
- (5) Unlawful Business Practices
- (6) Penalties Pursuant to Private Attorneys General Act of 2004
- (7) Failure to Indemnify Employees for Expenditures
- (8) Violation of the FLSA

Complaint Filed: March 15, 2023
Trial Date: None Set

1 Plaintiff Angel Rivera ("Plaintiff"), individually and on behalf of all others similarly
2 situated, hereby alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff submits this class action on behalf of all other similarly situated current
5 and former non-exempt employees of Mekanism, Inc. and DOES 1 through 50, inclusive (each,
6 a "Defendant" and together, "Defendants").

7 2. Plaintiff alleges that Defendants failed to comply with California's labor laws that
8 protect employees in connection with their work in and for the "Cinco Tip It Forward"
9 advertising campaign. Plaintiff seeks damages, penalties, interest, attorneys' fees, costs and
10 equitable restitutionary and injunctive relief.

11 3. Plaintiff, as proxy for the State of California, also brings this action pursuant to
12 the California Private Attorneys General Act, Labor Code sections 2698 et seq. ("PAGA") to
13 recover civil penalties (75% payable to the Labor Workforce Development Agency and 25%
14 payable to aggrieved employees). Plaintiff seeks to represent all aggrieved employees who
15 suffered one or more violations of the applicable Labor Code.

16 **JURISDICTION AND VENUE**

17 4. The Superior Court of the State of California has jurisdiction in this matter
18 because Plaintiff is a resident in the State of California and Defendants are qualified to do
19 business in and regularly conduct business in California. Further, no federal question is at issue
20 because the claims are based solely on California law.

21 5. This Court has jurisdiction over Plaintiff's claims for civil penalties pursuant to
22 PAGA.

23 6. Venue is proper in this judicial district and the County of Los Angeles, California,
24 because Plaintiff, and other persons similarly situated, performed work for Defendants in the
25 County of Los Angeles, Defendants maintain offices and facilities and transact business in the
26 County of Los Angeles, and Defendants' illegal policies and practices that are the subject of this
27 action were applied, at least in part, to Plaintiff and other persons similarly situated in the County
28 of Los Angeles.

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8. On information and belief, Defendant Mekanism, Inc. is now, and at all times mentioned in this complaint, was, a corporation organized and existing under the laws of the State of California and qualified to do business in California.

10. Plaintiff is informed and believes and based thereon alleges that at all times material to this complaint, Defendants were the employers and/or joint employers of Plaintiff and the putative class members. Defendants directly or indirectly, itself or through its agents, employed or exercised control over the wages, hours, and/or working conditions of the Plaintiff and the putative class members and/or had the right to control the manner or means of accomplishing the result desired. Moreover, Defendants had the power to prevent, but failed to prevent, the violations articulated herein from occurring, despite their knowledge of the same.

12. Plaintiff is informed and believes and based thereon alleges that each and every

one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of, each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

13. At all relevant times herein, Plaintiff and the putative class members were employed by Defendants under employment agreements that were partly written, partly oral, and/or partly implied. In perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying Plaintiff and the putative class members all wages earned and due, though methods and schemes that include, but are not limited to, failing to pay overtime premiums, failing to provide meal and rest breaks and/or compensation therefor, failing to properly maintain records, failing to provide accurate itemized statements for each pay period, and requiring, suffering, or permitting employees to work off the clock, in violation of California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. On or about April 14, 2022, Defendants employed Plaintiff as a background model for an advertising campaign for Proximo Spirits, Inc./Jose Cuervo entitled “Cinco Tip It Forward.” Plaintiff was promised \$50 for the fitting day, \$150 for a COVID test, and \$375 for 12 hours on the shooting day.

15. On or about April 14, 2022, Plaintiff worked over eight (8) hours for Defendants on the shooting day with no duty-free meal or rest break as required under California law. Plaintiff was also required to communicate with Defendants on their personal device prior to the shoot date to receive instructions about the shoot.

16. On or about May 26, 2022, Defendants paid Plaintiff the gross amount of \$575 with no overtime pay and no meal or rest break premium for the shoot day. In addition, Defendants failed to specify Plaintiff’s working hours or his hourly rate of pay. As a result of Defendants’ violations of California law, Plaintiff was denied his fundamental employment rights, including but not limited to, the right to overtime wages, the right to lawful meal or rest

breaks (or compensation therefor), the right to prompt payment of full wages upon termination of employment, and the right to accurate, itemized wage statements.

CLASS ACTION ALLEGATIONS

17. **Class Definition:** for the period from four years from the filing of this lawsuit (including applicable tolling periods) (the “Class Period”), Plaintiff seeks to represent the following class: all current and former non-exempt and non-union employees employed by Defendants in California who worked as a model, talent, or extra in a photo and/or commercial video production in exchange for a predetermined wage.

18. In addition to the Class, Plaintiff seeks to pursue claims on behalf of the following subclasses:

- a. **Overtime Subclass:** all current and former non-exempt employees in California who worked one or more shifts in excess of eight (8) hours in a day or forty (40) hours in a workweek at any time during the Class Period;
- b. **Break Premium Subclass:** all current and former non-exempt employees in California who worked one or more shifts of three and one-half (3.5) hours or more at any time during the Class Period, or under Wage Order No. 12-2001, all current and former non-exempt employees who worked one or more shifts of four (4) hours or more at any time during the Class Period; and/or all current and former non-exempt employees in California who worked one or more shifts of five (5) hours or more at any time during the Class Period, or under Wage Order No. 12-2001, all current and former non-exempt employees who worked one or more shifts of six (6) hours or more at any time during the Class Period;
- c. **Wage Statement Subclass:** all current and former non-exempt employees who received a payment of wages at any time during the Class Period.
- d. **Waiting Time Penalty Subclass:** all former non-exempt employees who separated from their employment with Defendants at any time during the Class Period; and

1 19. **Numerosity**: Code of Civil Procedure § 382: members of the Classes are so
2 numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less
3 than 50 persons in each of the classes. The precise number of Class members and their addresses
4 are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be
5 obtained from Defendants' records. Class members may be notified of the pendency of this
6 action by mail, electronic mail, the Internet, or published notice.

7 20. **Existence of Predominance of Common Questions of Fact and Law**: Code of
8 Civil Procedure § 382: Common questions of law and fact exist as to all members of the Class.
9 These questions predominate over any questions effecting only individual members of the class.
10 These common factual and legal questions include:

- 11 a. Whether Defendants' failure to pay non-exempt class members a daily
12 wage that is inclusive of overtime wages violated Labor Code § 510 and
13 the applicable IWC Wage Orders;
- 14 b. Whether Defendants' failure to pay premium wages for meal and rest
15 break violations violated Labor Code § 226.7(c) and the applicable IWC
16 Wage Orders;
- 17 c. Whether Defendants failed to provide class members who ceased
18 employment with Defendants all wages owed at the time of the cessation
19 of the employee-employer relationship;
- 20 d. Whether Defendants committed unlawful business practices or acts within
21 the meaning of Business & Professions Code Sects. 17200 *et seq.*;
- 22 e. Whether, as a consequence of Defendants' unlawful conduct, the
23 members of the Classes are entitled to restitution, and/or equitable relief;
- 24 f. Whether Defendants' affirmative defenses, if any, raise any common
25 issues of law or fact as to Plaintiff and the class members as a whole.

26 21. **Typically**: Plaintiff's claims are typical of the claims of the members of each
27 Class because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business
28 practices as the members of the classes. Plaintiff sustained the same types of injuries and losses

1 that the class members sustained. Plaintiff is subject to the same affirmative defenses as the
2 members of the class.

3 22. **Adequacy**: Plaintiff will fairly and adequately protect the interests of all Class
4 Members. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is
5 represented by legal counsel who has substantial class action experience in civil litigation and
6 employment law.

7 23. **Superiority**: A class action is superior to other available means for fair and
8 efficient adjudication of the claims of the Subclasses and would be beneficial for the parties and
9 the court. Class action treatment will allow a large number of similarly situated persons to
10 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
11 unnecessary duplication of effort and expense that numerous individual actions would require.
12 The monetary amounts due to many individual Class members are likely to be relatively small,
13 and the burden and expense of individual litigation would make it difficult or impossible for
14 individual members of the Class to seek and obtain relief. A class action will serve an important
15 public interest by permitting such individuals to effectively pursue recovery of the sums owed to
16 them. Further, class litigation prevents the potential for inconsistent or contradictory judgments
17 raised by individual litigation.

18 **COLLECTIVE ACTION ALLEGATIONS**

19 24. Plaintiff brings this action on behalf of himself and other similarly situated
20 employees as authorized under the FSLA, 29 U.S.C. § 216(b). The employees similarly situated
21 as follows: all nonexempt employees who worked for Defendants during the period beginning
22 no earlier than three years prior to the filing hereof to the mailing of the FLSA Opt-In Notice
23 (such persons are referred to hereafter as “Collective Action Members.”).

24 25. Plaintiff is similarly situated to the Collective Action Members in that Plaintiff
25 and the Collective Action Members were employed by Defendants and in that Defendant did not
26 pay Plaintiff and the Collective Action Members their overtime and/or minimum wages when
27 due. Plaintiff’s consent to an FLSA collective action is attached hereto as Exhibit 1.

28 26. This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C.

1 § 216(b).

2 27. All Collective Action Members should be given notice and be allowed to give
3 their consent in writing to participate in—in other words, to opt into—the collective action
4 pursuant to 29 U.S.C. § 216(b).

5 28. This action has been brought and may be properly maintained as a Collective
6 Action under the provisions of the FLSA because there is a well-defined community of interest
7 in the litigation and the identity of the members of the proposed Collective Action group is easily
8 ascertainable.

9 29. Defendants, as to Plaintiff and Collective Action Members, failed to comply with
10 the FLSA and, accordingly, Defendants' failure to make timely payment entitles Plaintiff and
11 each Collective Action Member to statutory damages and/or liquidated damages.

12 **FIRST CAUSE OF ACTION**

13 **Failure to Pay Overtime Wages**

14 **[Cal. Labor Code §§ 510, 1194]**

15 **(By Plaintiff and the Overtime Subclass Against Defendants)**

16 30. Plaintiff re-alleges and incorporate by reference the above paragraphs as though
17 fully set forth herein.

18 31. Pursuant to Labor Code Sections 510, 1194 and Subsection 3(D) of Wage Order
19 12-2001, require an employer to pay an employee one and one-half (1½) times such employee's
20 regular rate of pay for work in excess of eight hours in a day. See Wage Order 12(3)(d)
21 (specifically providing for "One and one-half (1½) times the extra player's rate of pay for the
22 ninth (9th) and tenth (10th) work hours of employment and not less than double the extra player's
23 rate of pay for all hours worked thereafter").

24 32. Plaintiff is informed and believes, and based thereon, alleges that Defendants
25 regularly and systematically, as a policy and practice, failed to compensate, and continue to fail
26 to compensate, Plaintiff and the Overtime Subclass for all overtime hours worked as required
27 under the foregoing provisions of the California Labor Code and applicable IWC Wage Order(s)
28 by, among other things, failing to pay overtime at one and one-half (1½) times or double the

regular rate of pay.

33. Defendants policy and practice of requiring overtime work but not paying at the proper overtime and double time rates for said work violates Labor Code Section 510 and the applicable California Wage Orders.

34. As a direct and proximate cause of the aforementioned violations, Plaintiff and the Overtime Subclass have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages and lost interest on such wages. Plaintiff and the Overtime Subclass are entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Pay All Premiums For Meal and Rest Period Violations

[Cal. Labor Code § 226.7]

(By Plaintiff and the Break Premium Subclass Against Defendants)

35. Plaintiff re-alleges and incorporates by reference the above paragraphs as though fully set forth herein.

36. At all relevant times, Plaintiff and the other members of the Break Premium Subclass were employees of Defendants covered by Labor Code Section 226.7 and the applicable Wage Orders, including Wage Order 12.

37. Pursuant to Labor Code Section 226.7 and Wage Order 12, Plaintiff and the other members of the Break Premium Subclass were entitled to rest periods of at least 10 minutes for each four-hour period of work, or major fraction thereof, and one hour of additional pay (i.e., premium) for every day a required rest period was not provided.

38. Pursuant to Labor Code Sections 226.7 and 512, and Wage Order 12, Plaintiff and the other members of the Break Premium Subclass were entitled to a meal period of at least 30 minutes for each workday they worked more than 6 hours in any workday, and one additional hour of pay (i.e., premium) for every day that a timely meal period was not provided.

39. When Defendants failed to allow Plaintiff and other members of the Break Premium Subclass to take their meal and/or rest periods in accordance with Labor Code Section

226.7 and Wage Order 12, Defendants maintained a policy or practice of not paying break premiums for an hour's work owed to members of the Break Premium Subclass as required by Labor Code Section 226.7 and Wage Order 12.

40. During the period in which Defendants did not provide Plaintiff and members of the Break Premium Subclass all compliant rest and/or meal periods, Defendants failed to provide Plaintiff and other members of the Break Premium Subclass the additional hour of pay required by Labor Code Section 226.7 and Wage Order 12.

41. As a result of Defendants' unlawful conduct, Plaintiff and other members of the Break Premium Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid all premiums owed for meal and rest period violations.

THIRD CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

[Cal. Labor Code § 226]

(By Plaintiff and the Wage Statement Subclass Against Defendants)

42. Plaintiff re-alleges and incorporates by reference the above paragraphs as though fully set forth herein.

43. Labor Code § 226(a) sets forth reporting requirements for employers when they pay wages, including in relevant part: "Every employer shall ... at the time of each payment of wages, furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned," Labor Code § 226(e)(1) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee, and is entitled to an award of costs and reasonable attorneys' fees."

44. Labor Code § 226(e)(2)(B)(iii) provides: "An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete

1 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and
2 the employee cannot promptly and easily determine from the wage statement alone one or more
3 of the following: (i) The amount of the gross wages or net wages paid to the employee during
4 the pay period or any of the other information required to be provided on the itemized wage
5 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a) ... (iii) The name
6 and address of the employer....”

7 45. Throughout the period applicable to this cause of action, Defendants knowingly
8 and intentionally failed to furnish, and continue to knowingly and intentionally fail to furnish, to
9 Plaintiff and other members of the Wage Statement Subclass, itemized statements accurately
10 showing the required information, including but not limited to all wages earned and correct
11 applicable hourly rates of pay.

12 46. Plaintiff and the other members of the Wage Statement Subclass suffered injury
13 by these failures because, among other things, they could not determine from the wage statement
14 alone their total wages and correct hourly rates.

15 47. Plaintiff and the other Wage Statement Subclass members are entitled to the
16 amounts provided for in Labor Code § 226(e), plus costs of suit.

17 48. Pursuant to Civil Code § 3287(a), Plaintiff and the other members of the Wage
18 Statement Subclass are entitled to recover prejudgment interest on the amount of their § 226(e)
19 remedies. Pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine,
20 and/or the common fund doctrine, Plaintiff and other members of the Class are entitled to recover
21 their attorney’s fees.

22 **FOURTH CAUSE OF ACTION**

23 **Waiting Time Penalties**

24 **[Cal. Labor Code § 201.5, 203]**

25 **(By Plaintiff and the Waiting Time Penalty Subclass Against Defendants)**

26 49. Plaintiff re-alleges and incorporates by reference the above paragraphs as though
27 fully set forth herein.

28 50. Plaintiff and the other members of the Waiting Time Penalty Subclass were

employees of Defendants covered by Labor Code Sections 201.5 whose employment with Defendants ended during the relevant class period.

51. Labor Code Section 201.5 provides “An employee engaged in the production or broadcasting of motion pictures whose employment terminates is entitled to receive payment of the wages earned and unpaid at the time of the termination by the next regular payday.”

52. As alleged above, Defendants failed to pay Plaintiff and other members of the Waiting Time Penalty Subclass all wages earned and unpaid prior to termination, including all overtime and premium wages due at the time of the cessation of the employee-employer relationship in accordance with Labor Code Section 201.5. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of not paying terminated employees all their final wages, including all overtime wages and premium wages, earned before termination due under Labor Code Section 201.5.

53. Defendants’ failure to pay Plaintiff and members of the Waiting Time Penalty Subclass all wages earned prior to termination in accordance with Labor Code Section 201.5 was willful. Defendants had the ability to pay all wages earned by employees prior to termination in accordance with Labor Code Section 201.5, but intentionally adopted policies or practices incompatible with the requirements of Labor Code Section 201.5.

54. Pursuant to Labor Code Section 201.5, Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to all wages earned prior to termination that Defendants failed to pay them.

55. Pursuant to Labor Code Section 203, Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon termination until paid, up to a maximum of 30 days.

56. As a result of Defendants’ conduct, Plaintiff and other members of the Waiting Time Penalty Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to termination.

57. As a result of Defendants’ conduct, Plaintiff and members of the Waiting Time

Penalty Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code Section 203.

58. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other members of the Waiting Time Penalty Subclass are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid continuation wages

FIFTH CAUSE OF ACTION

Unfair and Unlawful Business Practices

[Cal. Bus. & Prof. Code § 17200 *et seq.*]

(Against all Defendants by Plaintiff on Behalf of the Class)

59. Plaintiff re-alleges and incorporates by reference the above paragraphs as though fully set forth herein.

60. Beginning at an exact date unknown to Plaintiff, Defendants engaged in unfair competition as defined in California Business and Professions Code section 17200.

61. Section 17200 provides a private cause of action for any "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising."

62. At all times relevant to this action, Plaintiff and other members of the Subclasses were employees of Defendants entitled to the benefits of Labor Code sections 201-203, 226.7, 510 and 1194.

63. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other members of the Overtime Subclass their overtime wages at the rate of pay required by law. Accordingly, Plaintiff and other members of the Overtime Subclass did not receive the full amount of overtime and double time that they were entitled to receive by law.

64. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other members of the Break Premium Subclass their meal and rest break premium wages at the rate of pay required by law. Accordingly, Plaintiff and other members of

1 the Break Premium Class did not receive the full amount of premium wages that they were
2 entitled to receive by law.

3 65. During the relevant time period, Defendants intentionally and willfully failed to
4 pay Plaintiff and other members of the Waiting Time Penalty Subclass the full amount of their
5 overtime wages and/or premium wages upon the separation of employment by Defendants and,
6 thereafter, failed to pay waiting time penalties pursuant to Labor Code section 203 to the
7 members of the Waiting Time Penalty Subclass. Accordingly, Plaintiff and members of the
8 Waiting Time Penalty Subclass did not receive all of the wages they were entitled to receive by
9 law.

10 66. The unlawful conduct of Defendants alleged herein constitutes unfair competition
11 within the meaning of Business and Professions Code section 17200. Due to its unlawful and
12 unfair business practices in violation of the Labor Code, Defendants have gained a competitive
13 advantage over other comparable companies doing business in the State of California that comply
14 with their obligations under the Labor Code.

15 67. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
16 members of the Subclasses have suffered injury in fact and lost money or property. Plaintiff and
17 members of the Subclasses have been deprived of their rights to all overtime and double time
18 wages owed to them, additional premium wages for meal and rest period violations; and/or timely
19 payment of all earned wages due upon termination of employment.

20 68. Pursuant to Business and Professions Code section 17203, Plaintiff and other
21 members of the Subclasses are entitled to restitution of the amount of overtime pay by which
22 Defendants underpaid them, the amount of the premium wages by which Defendants underpaid
23 them, and to their reasonable attorneys' fees and costs under Code of Civil Procedure section
24 1021.5.

25 **SIXTH CAUSE OF ACTION**

26 **Civil Penalties Under PAGA**

27 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

28 69. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,

as though they are set forth in full.

70. At all times relevant to this action, Plaintiff and other Aggrieved Employees were “aggrieved employees” within the meaning of Labor Code Section 2699.

71. Defendants’ conduct as described herein, arising from Defendants’ failure to pay overtime premiums at the correct regular rate of pay, failure to pay rest and meal break premiums at the correct regular rate of compensation, failure to provide accurate wage statements, and failure to timely pay all wages upon cessation of employment constitute violations of Labor Code Sections 201-204, 210, 223, 225.5, 226, 226.3, 246, 226.7, 248.5, 510, 512, , 558, 1197, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198 and the applicable Wage Orders, including, Subsections 3, 11 and 12 of Wage Order 12-2001.

72. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

73. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated March 14, 2023, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. To date, more than 65 days after the postmark date of March 14, 2023, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff’s allegations.

74. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendants’ violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 12-2001, in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

1 75. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
2 reasonable attorney's fees and costs in connection with his claims for civil penalties.

3 **SEVENTH CAUSE OF ACTION**

4 **Failure to Indemnify Employees for Expenditures**
5 **(Against All Defendants for Failure to Indemnify Employees for Expenditures)**

6 76. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
7 paragraphs above in this Complaint.

8 77. As set forth above, Plaintiff and the Class were required to incur substantial
9 necessary expenditures and losses in direct consequence of the discharge of their duties or of
10 their obedience to directions of Defendants.

11 78. Defendants violated California Labor Code § 2802, by failing to pay and
12 indemnify Plaintiff and the Class for necessary expenditures and losses incurred in direct
13 consequence of the discharge of their duties or of their obedience to directions of Defendants.

14 79. As a result, Plaintiff and the Class were damaged at least in the amounts of the
15 expenses they paid, or which were deducted by Defendants from their wages.

16 80. Plaintiff and the Class are entitled to reasonable attorney's fees, expenses, and
17 costs of suit pursuant to California Labor Code § 2802(c) and interest pursuant to California
18 Labor Code § 2802(b).s

19 **EIGHTH CAUSE OF ACTION**

20 **Fair Labor Standards Act**
21 **(By Plaintiff Against All Defendants)**

22 81. Plaintiff realleges and incorporates herein by reference the allegations contained
23 in this Complaint as though fully set forth herein.

24 82. At all relevant times, Defendants were an "employer" engaged in interstate
25 commerce and/or in the production of goods for commerce, within the meaning of the FSLA, 29
26 U.S.C. § 203. At all relevant times, Defendant employed employees, including Plaintiff and each
27 member of the FSLA Collective.

28 83. Plaintiff consents in writing to be part of this action, pursuant to 29 U.S.C. §

216(b). As this case proceeds, it is likely that other individuals will sign consent forms and join as plaintiffs.

84. The FSLA requires all covered employees, such as Defendants, to compensate all non-exempt employees at a rate of not less than the statutory minimum wage and one and one-half times their regular rate of pay for work performed in excess of forty hours per week.

85. Plaintiff and the Collection Action Members were paid a daily wage and were not paid separately for their overtime hours. By failing to pay for all hours work, including overtime hours, Defendants failed to compensate Plaintiff and the Collection Action Members proper minimum and/or overtime compensation, in violation of the FLSA 29 U.S.C. §§ 201, *et seq.*

86. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 225(a).

87. Plaintiff, on behalf of himself and the Collection Action Members, seeks damages in the amount of all unpaid minimum and/or compensation owed to himself and the Collection Action Members, liquidated damages provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems just and proper.

88. Plaintiff, on behalf of himself and the Collection Action Members, seeks recovery of attorneys' fees and costs to be paid by defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

CLASS CERTIFICATION:

1. An order that the action be certified as a class action and/or as a collective action;
2. An order that Plaintiff be certified as the representative of the Class;
3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION:

1. Damages for underpaid overtime wages;
2. Prejudgment interest;

ON THE SECOND CAUSE OF ACTION:

1. Damages for underpaid premiums for meal and rest period violations;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

1. Damages for inaccurate wage statements for each pay period;
2. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION:

1. Damages for unpaid wages earned prior to termination of employment;
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Restitution of all underpayment of overtime wages by Defendants to Plaintiff and members of the Overtime Subclass;
2. Restitution of all underpayment of premium wages by Defendants to Plaintiff and members of the Break Premium Subclass;
3. Prejudgment interest;

ON THE SIXTH CAUSE OF ACTION:

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

ON THE SEVENTH CAUSE OF ACTION:

1. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 2802 by willfully failing to indemnify employees for expenditures;
2. For unpaid wages or unreimbursed business expenses as may be appropriate;

3. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
4. For reasonable attorneys' fees and for costs of suit incurred herein; and,
5. For such other and further relief as the Court may deem equitable and appropriate.

ON THE EIGHTH CAUSE OF ACTION:

1. Damages for underpaid overtime wages;
2. Prejudgment interest;

ON ALL CAUSES OF ACTION:

1. Judgment in favor of Plaintiff and the putative Class and against Defendants;
2. Reasonable attorney's fees;
3. Costs of suit; and
4. Such other relief as the Court deems just and proper.

DATED: November 22, 2024

KIM LEGAL, APC

By: /s/ Frank H. Kim
Frank H. Kim, Esq.
Attorneys for Plaintiff