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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 OSCAR CASTILLO RIVAS, on behalf of
11 himself and all others similarly situated,

12 Plaintiff,

13 vs.

14 ORTRONICS, INC., a Connecticut corporation;
15 AGILE STAFFING, INC., a California
16 corporation; and DOES 1 through 100, inclusive,

17 Defendants.

CASE NO. 30-2022-01287621-CU-OE-CXC

Assigned for All Purposes to: *Hon. Randall J. Sherman*

Dept. CX-105

FIRST AMENDED CLASS ACTION
COMPLAINT

1. **FAILURE TO PAY ALL WAGES**
2. **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU OF**
3. **FAILURE TO PROVIDE REST BREAKS OR COMPENSATION IN LIEU OF**
4. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
5. **WAITING TIME PENALTIES**
6. **VIOLATIONS OF THE UNFAIR COMPETITION LAW; AND**
7. **VIOLATIONS OF CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT, LABOR CODE § 2699, ET SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff OSCAR CASTILLO RIVAS (hereinafter “Plaintiff”), on behalf of himself and all
2 others similarly situated, brings this action against defendant ORTRONICS, INC., AGILE
3 STAFFING, INC. and DOES 1-100 (collectively, “Defendants”), and alleges on information and
4 belief, except those allegations relating to Plaintiff himself, which are asserted on personal
5 knowledge as follows:

6 **I. JURISDICTION AND VENUE**

7 1. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
8 §410.10 as Defendants do business in the State of California and have employed Plaintiff and each
9 member of the putative class in the State of California and all of the unlawful conduct alleged herein
10 occurred in the State of California.

11 2. The California Superior Court has jurisdiction in the matter because there is no
12 federal question at issue as the issues herein are based solely on California statutes and laws
13 including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil
14 Procedure, Rule of Court, and Business and Professions Code.

15 3. Venue is proper in this Court because Plaintiff, at all relevant times, was employed at
16 a place of business located within the County of Orange.

17 4. Venue as to each defendant is proper in this judicial district pursuant to Code of Civil
18 Procedure §395. Defendants operate and do business within the State of California, including
19 Orange County, and each defendant is within the jurisdiction of this Court for service of process
20 purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and each of the similarly-
21 situated members of the putative class within the State of California (“Plaintiff Class”). Defendants
22 employ numerous members of the Plaintiff Class within the State of California, including Los
23 Angeles, California.

24 5. Plaintiff is informed, believes, and thereon alleges that Defendants’ conduct, as
25 alleged herein, forms a significant basis for the claims asserted by Plaintiff and his fellow members
26 of the Plaintiff Class in this action.

27 6. Plaintiff is informed, believes, and thereon alleges that Plaintiff and his fellow
28 members of the Plaintiff Class are seeking significant relief from Defendants.

7. Plaintiff is informed, believes, and thereon alleges that the principal injuries sustained

1 by Plaintiff and his fellow members of the Plaintiff Class, as alleges herein, resulted from the
2 conduct of Defendants, and were incurred in the forum state - California.

3 **II. INTRODUCTION**

4 8. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of
5 Plaintiff and other similarly-situated members of the Plaintiff Class employed by or formerly
6 employed by Defendants within the State of California.

7 9. For at least four years prior to the filing of this action and through to the present,
8 Defendants have had a consistent policy of failing to: pay all wages, including minimum wages,
9 regular and overtime wages, provide meal and rest breaks, pay wages of terminated or resigned
10 employees, comply with the itemized wage statement provisions, in violation of California wage and
11 hour laws, provide valid written notice compliant with Labor Code §2810.5, and violating the Unfair
12 Competition law under Business & Professions Code § 17200 et seq.

13 10. Plaintiff, on behalf of himself and all members of the Plaintiff Class, brings this
14 action pursuant to, including but not limited to, Labor Code §§200, 201, 202, 203, 204, 226, 226.7,
15 510, 512, 1194, 2699 et seq., and applicable Wage Orders, seeking unpaid overtime wages and/or
16 proper calculation of the overtime rate, meal and rest period premiums, penalties, and reasonable
17 attorneys' fees and costs.

18 11. Plaintiff, on behalf of himself and all members of the Plaintiff Class, pursuant to
19 Business & Professions Code §§17200 and 17208, also seeks restitution of unpaid wages and
20 reimbursements.

21 **III. THE PARTIES**

22 12. Plaintiff OSCAR CASTILLO RIVAS resides in the County of Los Angeles in the
23 State of California. Plaintiff was employed by Defendants as a non-exempt hourly employee from
24 approximately November 2021 to April 28, 2022.

25 13. Defendant ORTRONICS, INC. ("Defendant Ortronics"), is a Connecticut
26 corporation, with its principal place of business in Orange, California, specializing in the
27 manufacturing of electronic enclosures.

28 14. Defendant AGILE STAFFING, INC. ("Defendant Agile"), is a California
corporation, with its principal place of business in Orange, California, specializing in filling

1 positions for companies while providing job opportunities for people. As a staffing agency for
2 Defendant Ortronics, Inc., Defendant Agile Staffing, Inc. employed Plaintiff and is liable to Plaintiff
3 and Plaintiff Class for violations under the California Labor Code.

4 15. DOES 1 through 100, inclusive, are persons or entities whose true names and
5 identities are now unknown to Plaintiff, and who therefore are sued by such fictitious names under
6 Code of Civil Procedure §474. Plaintiff will amend this complaint to allege their true names and
7 capacities once ascertained. Plaintiff is informed and believes that each of the fictitiously-named
8 Doe defendants, including any such defendants that may be the agents, representatives, or parents or
9 subsidiary corporations of the named Defendants, is responsible in some manner for the occurrences,
10 events, transactions, and injuries alleged herein and that the harm suffered by Plaintiff and Plaintiff
11 Class were proximately caused by them in addition to Defendants.

12 16. Plaintiff is informed and believes and thereon alleges that each defendant, including
13 the Doe defendants, acted in concert with each and every other defendant, intended to and did
14 participate in the events, acts, practices and courses of conduct alleged herein, and was a proximate
15 cause of damage and injury thereby to Plaintiff and Plaintiff Class as alleged herein.

16 17. At all times herein mentioned, each defendant was the agent or employee of each of
17 the other Defendants and was acting within the course and scope of such agency or employment.

18 18. Plaintiff is informed and believes that Defendants are joint employers in that they are
19 and were operating as a joint enterprise and/or single enterprise of Defendants, as the employer of
20 Plaintiff and Plaintiff Class.

21 19. Plaintiff is informed and believes, and based thereon alleges, that each defendant
22 acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint
23 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
24 legally attributable to the other Defendants.

25 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants are now,
26 and/or at all times mentioned in this Complaint were the agents, servants, franchisers, franchisees,
27 representatives, owners, partners, shareholders, and/or employees of some or all other Defendants,
28 and vice-versa, and in doing the things alleged in this Complaint and that Defendants are now and/or
at all times mentioned in this Complaint were acting within the course and scope of that agency,

1 servitude, retention and/or employment.

2 21. On information and belief, Defendants are now, and/or at all times mentioned in this
3 Complaint were the affiliates of some or all other Defendants, and vice-versa, and in doing the things
4 alleged in this Complaint, Defendants were directly or indirectly controlling, controlled by or under
5 common control with such other Defendants.

6 22. On information and belief, Defendants at all times mentioned in this Complaint
7 approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions
8 alleged in this Complaint.

9 23. Plaintiff is ignorant of the true names, capacities, relationships and extent of
10 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 100,
11 inclusive, but on information and belief allege that said Defendants are legally responsible for the
12 payment of proper overtime wages, rest and meal period compensation and/or Labor Code section
13 203 penalties to the Plaintiff Class by virtue of their unlawful practices, and therefore sue these
14 Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
and capacities of the DOE Defendants when ascertained.

15 24. Plaintiff is informed and believes, and based thereon allege, that each defendant acted
16 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
17 business plan or policy in all respects pertinent hereto, and the acts of each defendant is legally
18 attributable to the other defendant.

19 **IV. GENERAL ALLEGATIONS**

20 25. Plaintiff and Plaintiff Class are employees or former employees of Defendants and
21 have not been paid, during the relevant liability periods, the proper overtime wages for all hours
22 actually worked. Plaintiff and Plaintiff Class were not paid meal period premiums for missed,
23 interrupted or late meal periods. Plaintiff and Plaintiff Class were not paid rest break premiums for
24 missed rest breaks.

25 26. Plaintiff and Plaintiff Class, at all times pertinent hereto, were not exempt from
26 overtime wage requirements, meal and rest break requirements, or the implementing rules and
27 regulations of the applicable IWC California Wage Orders.
28

27. At the time Plaintiff's employment ended, and the employment of other former employees of Defendants ended, Defendants willfully failed to pay all the wages then owing, including overtime wages then owing and meal and rest break premiums.

28. Defendants have failed to comply with Labor Code §226(a) by not providing Plaintiff and Plaintiff Class with itemized wage statements accurately reporting all applicable hourly rates or the correct amount of regular, and/or overtime wages earned.

29. Finally, again because Defendants failed to properly calculate overtime rates and pay proper overtime wages, Plaintiff and Plaintiff Class did not receive payment of all wages earned and unpaid immediately upon termination or resignation of their employment.

30. During the liability period, Defendants, and each of them enforced a company-wide policy which failed to provide proper meal periods (i.e., an uninterrupted 30-minute meal period with in the first five hours of work). Plaintiff and Plaintiff Class were also entitled to a second meal period on days they worked more than ten hours in a day, however, Defendants had a company-wide policy which failed to provide a second meal period on such days.

31. Additionally, Plaintiff and Plaintiff Class were consistently interrupted during the ten-minute rest breaks provided by Defendants.

32. Furthermore, Defendants failed and/or refused to pay Plaintiff Class one (1) hour's pay at the employees' regular rate of pay as premium compensation for failure to provide full rest and/or meal periods or failure to provide such rest and/or meal periods within the statutory time frame, as a result of their company-wide improper meal period and rest break policies.

33. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

V. CLASS ALLEGATIONS

34. Plaintiff brings this action on behalf of himself and all other similarly situated persons, as a class action pursuant to California Civil Code of Procedure section 382. Plaintiff seeks to represent the class and sub-classes as follows:

1 a. **Class:**

2 All non-exempt hourly employees employed by Defendants in the State of
3 California during the liability period;

4 b. **Sub-Class 1: “Failure to Pay All Wages”**

5 All non-exempt hourly employees employed by Defendants in the State of
6 California during the liability period, and who were not paid all wages due them,
7 including but not limited to overtime and double overtime wages;

8 c. **Sub-Class 2: “Failure to Provide Meal Periods”**

9 All non-exempt hourly employees employed by Defendants in the State of
10 California during the liability period, and who were not provided with legally
11 compliant meal periods, or meal period premiums;

12 d. **Sub-Class 3: “Failure to Provide Rest Breaks”**

13 All non-exempt hourly employees employed by Defendants in the State of
14 California during the liability period, and who were not provided legally
15 compliant rest periods, or rest period premiums;

16 e. **Sub-Class 4: “Waiting Time Class”**

17 All non-exempt hourly employees employed by Defendants in the State of
18 California during the liability period, who have been terminated or resigned, and
19 have not been paid wages pursuant to Labor Code section 203 and are owed
20 restitution for waiting time penalties deriving from unpaid wages;

21 f. **Sub-Class 5: “Failure to Furnish Accurate Itemized Wage Statements”**

22 All non-exempt hourly employees employed by Defendants in the State of
23 California during the liability period, and who were not provided pay stubs that
24 complied with Labor Code §226; and

25 g. **Sub-Class 6: “UCL Class”**

26 All non-exempt hourly employees employed by Defendants in the State of
27 California during the liability period, and who suffered injury, including lost
28 money, as a result of Defendants’ unfair competition, including but not limited to
their policy of willfully failing to provide proper meal and rest periods, failing to
compensate for all wages earned, including overtime and double overtime wages,
and failing to provide properly itemized wage statements.

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

36. This action has been brought and may be maintained as a class action pursuant to
Code of Civil Procedure §382 because there is a well-defined common interest of many persons and
it is impractical to bring them all before the court.

1 a) *Numerosity*: The potential members of the Class as defined are so numerous that joinder of
2 all members of the Class is impracticable. While the precise number of members of the Class
3 has not been determined at this time, Plaintiff is informed and believes that Defendants
4 currently employ, and during the liability period employed, over 50 employees in the State of
5 California. Accounting for employee turnover during the liability period necessarily
6 increases this number substantially. Plaintiff alleges Defendants' employment records would
7 provide information as to the number and location of all members of the Class. Joinder of all
8 members of the Class is not practicable.

9 b) *Commonality*: There are questions of law and fact common to all members of the Class and
10 subclasses. These common questions include, but are not limited to:

- 11 a. Did Defendants violate Labor Code §1194 by not providing members of the Class the
12 proper overtime compensation applicable to such Class members?
- 13 b. Did Defendants violate Labor Code §204 by not paying members of the Class for all
14 overtime wages earned during each pay period?
- 15 c. Did Defendants violate Labor Code §226(a) by not furnishing members of the Class
16 with accurate wage statements?
- 17 d. Did Defendants violate Labor Code §§201 or 202 by not paying all overtime wages
18 owed upon termination or resignation?
- 19 e. Are Defendants liable to members of the Class for penalty wages under Labor Code
20 §203?
- 21 f. Are Defendants liable to members of the Class for penalties under Labor Code
22 §226(e)?
- 23 g. Did Defendants violate the unfair competition law, Business & Professions Code
24 §17200 et seq., by their failure to properly compensate employees for overtime hours
25 worked?
- 26 h. Did Defendants violate the unfair competition law, Business & Professions Code
27 §17200 et seq., by their failure to provide proper meal periods and rest breaks and
28 provide premium compensation?
- i. Are members of the Class entitled to attorneys' fees and costs?

- j. Are members of the Class entitled to interest?
- c) *Typicality*: The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any member of the Plaintiff Class, and the relief sought is typical of the relief which would be sought by members of the Plaintiff Class in separate actions. Plaintiff and Plaintiff Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct, in violation of laws and regulations that have the force and effect of law and statutes as alleged herein.
- d) *Adequacy of Representation*: Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsels who represent Plaintiff are competent and experienced in litigating class actions, including wage and hour class actions.
- e) *Superiority of Class Action*: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Class is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to properly compensate members of the Class for wages.
- f) Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION
FIRST CAUSE OF ACTION
FAILURE TO PAY ALL WAGES
(On Behalf of Plaintiff and Plaintiff Class)
(Against All Defendants)

45. Plaintiff, individually, and on behalf of Plaintiff Class, hereby realleges and incorporates by reference each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

46. Defendants have had a consistent policy and practice of failing to pay all wages due, including but not limited to minimum wages, overtime wages and premium wages. At all relevant

1 times herein, Defendants required its non-exempt hourly employees to perform work, including
2 during meal and rest periods, which were not included in the wages paid to employees.

3 47. Defendants' pattern, practice and uniform administration of corporate policy
4 regarding illegal employee compensation as described herein is unlawful and creates an entitlement,
5 pursuant to Labor Code §218, to recovery by Plaintiff and the members of the Failure to Pay All
6 Wages Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
7 the appropriate rate.

8 48. Pursuant to Labor Code §218.6 and CCP §3287, the members of the Failure to Pay
9 All Wages Class seek recovery of pre-judgment interest on all amounts recovered herein.

10 49. Pursuant to Labor Code §218.5, the members of the Failure to Pay All Wages Class
11 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS OR COMPENSATION IN LIEU OF**
14 **(On Behalf of Plaintiff and Plaintiff Class)**
15 **(Against All Defendants)**

16 50. Plaintiff, individually, and on behalf of Plaintiff Class, hereby realleges and
17 incorporates by reference each and every one of the allegations contained in the preceding and
18 foregoing paragraphs of this Complaint as if fully set forth herein.

19 51. Labor Code §226.7(b) provides that, "[a]n employer shall not require an employee to
20 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
21 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
22 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

23 52. Labor Code §512 provides that, "[a]n employer may not employ an employee for a
24 work period of more than five hours per day without providing the employee with a meal period of
25 not less than 30 minutes, except that if the total work period per day of the employee is no more than
26 six hours, the meal period may be waived by mutual consent of both the employer and employee.
27 An employer may not employ an employee for a work period of more than 10 hours per day without
28 providing the 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 period may be waived by mutual consent of the
employer and the employee only if the first meal period was not waived."

1 53. Labor Code §516 provides that the Industrial Welfare Commission “may adopt of
2 amend working condition orders with respect to break period, meal periods, and days of rest for any
3 workers in California consistent with the health and welfare of those workers.”

4 54. Section 11(A) of the IWC Wage Order(s) provides that, “[u]nless the employee is
5 relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’
6 meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the
7 nature of the work prevents an employee from being relieved of all duty and when by written
8 agreement between the parties an on-the-job paid meal period is agreed to. The written agreement
9 shall state that the employee may, in writing, revoke the agreement at any time.”

10 55. Section 11(B) of the IWC Wage Order(s) provides that, “[i]f an employer fails to
11 provide an employee a meal period in accordance with the applicable provisions of this order, the
12 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
13 for each workday and that the meal period is not provided.”

14 56. On one or more occasions, Plaintiff and Plaintiff Class worked over five (5) hours per
15 shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to
16 exceeding five (5) hours of employment.

17 57. Further, on one more occasions, Plaintiff and Plaintiff Class worked over ten (10)
18 hours per shift and therefore were entitled to a second meal period of not less than thirty (30)
19 minutes.

20 58. Plaintiff and Plaintiff Class did not validly or legally waive their meal periods, by
21 mutual consent with Defendants or otherwise.

22 59. Plaintiff and Plaintiff Class did not enter into any written agreement with Defendants
23 agreeing to an on-the-job paid meal period.

24 60. As a matter of Defendants’ established company policy, Defendants failed to always
25 comply with the meal period requirements established by Labor Code §§226.7, 512 and 516, and
26 Section 11 of the IWC Wage Order(s) by failing to always provide Plaintiff and Plaintiff Class with a
27 first and in some cases a second legally compliant meal period.

28 61. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(c)
which states, “[i]f an employer fails to provide an employee a meal or rest or recovery period in

1 accordance with a state law, including, but not limited to, an applicable statute or applicable
2 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
3 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
4 the employee one additional hour of pay at the employee's regular rate of compensation for each
5 workday that the meal or rest or recovery period is not provided," Plaintiff and Plaintiff Class are
6 entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular
7 rate of compensation for each work day that the meal period was not provided, in a sum to be proven
8 at trial.

9 **THIRD CAUSE OF ACTION**
10 **FAILURE TO PROVIDE REST BREAKS OR COMPENSATION IN LIEU OF**
11 **(On Behalf of Plaintiff and Plaintiff Class)**
12 **(Against All Defendants)**

13 62. Plaintiff, individually, and on behalf of the Plaintiff Class, hereby realleges and
14 incorporates by reference each and every one of the allegations contained in the preceding and
15 foregoing paragraphs of this Complaint as if fully set forth herein.

16 63. Labor Code §226.7 requires employers to authorize and permit all employees to take
17 a paid ten (10) minute rest break for every four (4) work hours, or major fraction thereof.

18 64. Labor Code §226.7(b) provides that if an employer fails to provide an employee rest
19 breaks in accordance with this section, the employer shall pay the employee one (1) hour of pay at
20 the employee's regular rate of compensation for each workday that the rest break is not provided.

21 65. Defendants, and each of them, failed and or refused to implement a relief system by
22 which Plaintiff and Plaintiff Class could receive rest breaks and/or work free rest breaks.
23 Furthermore, due to Defendants' relief system, Plaintiff and Plaintiff Class did not receive their rest
24 breaks within the required statutory time frame. By and through their actions, Defendants
25 intentionally and improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of
26 Labor Code §§226.7 and 512.

27 66. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than four
28 (4) hours in a workday.

67. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code §226.7(c)
which states, "[i]f an employer fails to provide an employee a meal or rest or recovery period in

1 accordance with a state law, including, but not limited to, an applicable statute or applicable
2 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
3 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
4 the employee one additional hour of pay at the employee's regular rate of compensation for each
5 workday that the meal or rest or recovery period is not provided," Plaintiff and Plaintiff Class are
6 entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular
7 rate of compensation for each work day that the rest break was not provided, in a sum to be proven
8 at trial.

9 **FOURTH CAUSE OF ACTION**
10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
11 **(On Behalf of Plaintiff and Plaintiff Class)**
12 **(Against All Defendants)**

13 68. Plaintiff, individually, and on behalf of the Plaintiff Class, hereby realleges and
14 incorporates by reference each and every one of the allegations contained in the preceding and
15 foregoing paragraphs of this Complaint as if fully set forth herein.

16 69. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or
17 at the time of each payment of wages, furnish each of his or her employees, either as a detachable
18 part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid
19 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
20 earned, (2) total hours worked by the employee...(4) all deductions...(5) net wages earned...and (9)
all applicable hourly rates in effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee..."

21 70. Further, the IWC Wage Order(s) §7(A) states in pertinent part: "(A) Every employer
22 shall keep accurate information with respect to each employee including the following:...(3) Time
23 records showing when the employee begins and ends each work period. Meals periods, split shift
24 intervals, and total daily hours worked shall also be records...(5) Total hours worked in the payroll
25 period and applicable rate of pay..."

26 71. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Order(s) §7(A),
27 California employers are required to maintain accurate records pertaining to the total hours worked
28 for Defendants by Plaintiff and Plaintiff Class, including but not limited to, beginning and ending of

1 each work period, meal period and split shift interval, the total daily hours worked, and the total
2 hours worked per pay period and applicable rates of pay.

3 72. As a pattern and practice, in violation of Labor Code §226(a) and IWC Wage
4 Order(s) §7A, Defendants did not and still do not furnish Plaintiff and Plaintiff Class with an
5 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
6 employee, (3) all deductions, (4) net wages earned, and/or (5) all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by each
8 respective forecaddie.

9 73. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage
10 Order(s) §7(A), Defendants did not and do not maintain accurate records pertaining to the total hours
11 worked for Defendants by Plaintiff and Plaintiff Class, including but not limited to, beginning and
12 ending of each work period, meal period and split shift interval, the total daily hours worked, and the
13 total hours worked per pay period and applicable rates of pay.

14 74. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an
15 employee suffers injury if the employer fails to provide accurate and complete information as
16 required of any one or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot
17 promptly and easily ascertain requisite information within reference to other documents or
18 information.

19 75. Here, Plaintiff and Plaintiff Class suffered injury because Defendants failed to
20 provide accurate and complete information as required of one or more items listed in Labor Code
21 §226(a)(1)-(9) and Plaintiff and Plaintiff Class could not and cannot promptly and easily ascertain
22 requisite information without reference to other documents or information.

23 76. In addition, Plaintiff and Plaintiff Class have suffered injury as a result of
24 Defendants' failure to maintain accurate records for Plaintiff and Plaintiff Class in that Plaintiff and
25 Plaintiff Class were not timely provided written accurate itemized statements showing all requisite
26 information, including but not limited to total hours worked by the employee, net wages earned and
27 all applicable hourly rates in effect during the pay period and the corresponding number of hours
28 worked at each hourly rate, in violation of Labor Code §226 and the IWC Wage Order(s) §7(A),
such that Plaintiff and Plaintiff Class were misled by Defendants as to the correct information

1 regarding various items, including but not limited to total hours worked by the employee, net wages
2 earned and all applicable hourly rates in effect during the pay period and the corresponding number
3 of hours worked at each hourly rate.

4 77. Pursuant to Labor Code §226(e), Plaintiff and Plaintiff Class are entitled to fifty
5 dollars (\$50) per employee for the initial pay period in which a violation hereunder occurs and one
6 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
7 aggregate penalty of four thousand dollars (\$4,000).

8 78. Pursuant to Labor Code §226(g), the currently employed Plaintiff and Plaintiff Class
9 are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

10 79. Pursuant to Labor Code §226(e) and/or §226(g), Plaintiff and Plaintiff Class are also
11 entitled to an award of costs and reasonable attorneys' fees.

12 **FIFTH CAUSE OF ACTION**
13 **WAITING TIME PENALTIES**
14 **(On Behalf of Plaintiff and Plaintiff Class)**
15 **(Against All Defendants)**

16 80. Plaintiff, individually, and on behalf of the Plaintiff Class, hereby realleges and
17 incorporates by reference each and every one of the allegations contained in the preceding and
18 foregoing paragraphs of this Complaint as if fully set forth herein.

19 81. Labor Code §§201 and 202 require Defendants to pay their employees all wages due
20 immediately at the time of discharge, layoff, or resignation made with at least 72 hours of notice, or
21 within 72 hours of resignation made within 72 hours of notice.

22 82. Labor Code §203 provides that if an employer willfully fails to pay compensation
23 promptly upon separation, as required by §§201 or 202, then the employer is liable for waiting time
24 penalties in the form of one day of wages for up to 30 days.

25 83. Plaintiff and Plaintiff Class are informed, believe, and allege thereon that Defendants
26 have failed to pay all earned wages to Plaintiff and Plaintiff Class during their employment with
27 Defendants. In addition, Plaintiff and Plaintiff Class have been discharged, laid off, resigned, retired
28 or otherwise separated from employment, but Defendants have not unconditionally paid earned
wages upon separation of employment within the time frame mandated by Labor Code §§201 and
202. Defendants' conduct in this regard has been willful.

1 84. As a consequence of Defendants' willful failure to pay wages due to each such
2 employee following separation from employment as required by Labor Code §§201 and 202,
3 Plaintiff and Plaintiff Class whose employment ended prior to the filing of this case and continuing
4 through the date of class certification are entitled to recover from Defendants an additional sum as
5 penalty, pursuant to Labor Code §203, equal to a day's wages, for thirty (30) days, plus interest, for
6 each employee who separated from employment Defendants, in amounts according to proof at trial.

7 **SIXTH CAUSE OF ACTION**
8 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
9 **(On Behalf of Plaintiff and Plaintiff Class)**
10 **(Against All Defendants)**

11 85. Plaintiff, individually, and on behalf of the Plaintiff Class, hereby realleges and
12 incorporates by reference each and every one of the allegations contained in the preceding and
13 foregoing paragraphs of this Complaint as if fully set forth herein.

14 86. Business & Professions Code §17200 prohibits unfair competition in the form of any
15 unlawful, unfair, or fraudulent business act or practice.

16 87. Business & Professions Code §17204 allows "any person acting for the interests of
17 itself, its members or the general public" to prosecute a civil action for violation of the UCL.

18 88. Within the liability period, Defendants have improperly, fraudulently, and unlawfully
19 excluded the payment of bonus payments in its calculation of overtime wages and have thereby
20 committed unlawful, unfair and/or fraudulent business acts and practices and defined by Business &
21 Professions Code §17200, by engaging in the following conduct:

- 22 a. Failing to pay Plaintiff and Plaintiff Class proper overtime compensation for all hours
23 worked over eight (8) in a day or forty (40) in a workweek, as required by Labor
24 Code §§510, 1194 *et seq.* and IWC Wage Order(s);
- 25 b. Failing and refusing to provide meal periods to Plaintiff and Plaintiff Class, as
26 required by Labor Code §§226.7 and IWC Wage Order(s);
- 27 c. Failing and refusing to provide rest breaks to Plaintiff and Plaintiff Class, as required
28 by Labor Code §§226.7 and IWC Wage Order(s);
- d. Failing to provide accurate itemized wage statements to Plaintiff and the Plaintiff
Class, as required by Labor Code §226;

1 e. Failing to maintain payroll records showing the actual hours worked each day by
2 Plaintiff and Plaintiff Class, as required by Labor Code §1174 *et seq.* and IWC Wage
3 Order(s);

4 f. Failing to pay, upon termination of employment all wages due to Plaintiff and
5 Plaintiff Class, as required by Labor Code §§201, 202, and 203; and

6 89. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts
7 and practices for purposes of Business and Professions Code §17200.

8 90. As a result of the aforementioned actions, Plaintiff and Plaintiff Class have lost and
9 continue to lose money or property and suffered and continue to suffer injury in fact. Defendants
10 continue to hold unpaid wages and other funds legally belonging to Plaintiff and Plaintiff Class.

11 91. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business &
12 Professions Code §§17203 and 17208 for all unpaid wages, overtime pay, missed meal period
13 compensation, and interest since at least four years prior to the filing of this Complaint.

14 92. Pursuant to Business & Professions Code §17203, Plaintiff and Plaintiff Class are
15 entitled to: (a) restitution of money acquired by Defendants by means of their unfair business
16 practices, in amounts not yet ascertained by to be ascertained at trial; (b) a declaration that
17 Defendants' business practices are unfair within the meaning of the statute, (c) a permanent
18 injunction to prohibit Defendants from classifying Plaintiff and Plaintiff Class as independent
19 contractors.

20 93. Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of
21 the Labor Code pursuant to Business & Professions Code §17202.

22 94. By all of the foregoing alleged conduct, Defendants have committed, and are
23 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the
24 meaning of Business & Professions Code §17200 *et seq.*

25 95. Plaintiff have assumed the responsibility of enforcement of the laws and lawful
26 claims specified herein. There is a financial burden incurred in pursuing this action which is in the
27 public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil
28 Procedure §1021.5.

**SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2699, ET SEQ.
(On behalf of Plaintiff and All Aggrieved Employees)
(Against Defendant Ortronics)**

96. Plaintiff, on behalf of himself and all aggrieved employees, hereby realleges and incorporates the preceding paragraphs as though fully set forth herein.

97. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agencies or employees), such penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself of herself and other current or former employees), Plaintiff and all aggrieved employees seek recovery of all applicable civil penalties.

98. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agencies or employees), such penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself of herself and other current or former employees), Plaintiff and all aggrieved employees seek recovery of all applicable civil penalties.

99. Pursuant to Labor Code §2699(e) (which provides that for all provisions of the Labor Code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions), Plaintiff and all aggrieved employees seek recovery of the applicable civil penalties pursuant to Labor Code §2699(e)(2) as follows:

- a. Penalties under Labor Code §2699(f) in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under Labor Code §558, in addition to and entirely independent and apart from other penalty provided in the Labor Code, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100

1 foe each subsequent violation for each underpaid employee for each pay period for
2 which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages, with all wages recovered pursuant to Labor Code §558 provided to
4 the aggrieved employees;

5 c. Penalties under Labor Code §226.3, in addition to and entirely independent and apart
6 from other penalty provided in the Labor Code, in the amount of \$250 for each
7 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved
8 employee per pay period for each subsequent violation;

9 d. Penalties under Labor Code §256, in addition to and entirely independent and apart
10 from other penalty provided in the Labor Code, including Labor Code §2699, et seq.,
11 for any aggrieved employee who was discharged or quit, and was not paid all earned
12 wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and
13 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each
14 day that he or she was paid late, until payment was/is made, up to a maximum of
15 thirty (30) days; and

16 e. Any additional penalties and sums as provided by the Labor Code and/or other
17 relevant statutes.

18 100. Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to Labor
19 Code §2699(g)(1), 218.5 (wages), 1194(a), and any other applicable statute.

20 101. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved
21 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
22 listed in Section 2699.5 shall commence only after the following requirements have been met: (1)
23 The aggrieved employee or representative shall give written notice by certified mail to the LWDA
24 and the employer of the specific provisions of this code alleged to have been violated, including the
25 facts and theories to support the alleged violation."

26 102. Here, Plaintiff's civil action alleges violations of provisions listed under Labor Code
27 §2699.5. As such, Labor Code §2699.3(a) applies to this action, and Labor Code §2699.3(b) and
28 §2699.3(c) do not apply to this action.

103. On or about March 14, 2023, Plaintiff complied with Labor Code §2699.3(a) by providing written notice via online submission to the LWDA, and providing written notice to Defendant Ortronics via U.S. Certified Mail, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

104. Labor Code §2699.3(a) states in pertinent part: “(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

105. As of May 16, 2023 (over 65 calendar days after Plaintiff's March 14, 2023 LWDA notice was submitted online and mailed via certified mail to Defendant Ortronics), Plaintiff has not received any notification that the LWDA intends to investigate the alleged violations. As such, Plaintiff has complied with Labor Code §2699.3(a) and has been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699, et seq.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the above-described Plaintiff Class and aggrieved employees, prays for relief as follows, jointly and severally from all Defendants:

A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure §382, and define the class as requested herein;

B. Provision of class notice to all members of Plaintiff Class;

C. A declaratory judgment that Defendants' violations described above were willful;

D. An equitable accounting to identify, locate, and restore to Plaintiff and Plaintiff Class, the wages due;

E. For an Order requiring Defendants to identify each of the member of Plaintiff Class by name, home address, home telephone number and, if available, email address;

F. For an Order requiring Defendants to make full restitution and payment pursuant to California law;

G. For all other appropriate injunctive, declaratory and equitable relief;

1 H. An award to Plaintiff and Plaintiff Class in the amount of unpaid wages, including but
2 not limited to minimum wages, proper overtime compensation, meal period and rest break
3 premiums, including interest thereon, subject to proof at trial;

4 I. All remedies available for violations of California Labor Code §§203 and 204;

5 J. For penalties and all other remedies under Labor Code §2699 et seq.;

6 K. An award of reasonable attorneys' fees and costs, pursuant to Labor Code §§ 226,
7 218.5, 1194, 2699 et seq., Code of Civil Procedure §1021.5 and/or any other applicable law; and

8 L. An award of such other and further relief as this Court deems just and proper.

9 **IX. DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

11 Dated: May 18, 2023

VERUM LAW GROUP, APC

12 By: 

13 Sam Kim

Yoonis Han

14 Attorneys for Plaintiff OSCAR CASTILLO RIVAS,
15 and all others similarly situated
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