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DAVID CANCINO

FILED
Superior Court of California
County of Los Angeles

05/08/2023

David W. Slayton, Executive Officer / Clerk of Court

By: D. Tamayo Deputy

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

DAVID CANCINO, an individual, on his
own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

METRO EIGHTEEN, INC, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV37408

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY MINIMUM WAGES
DUE TO ROUNDING (Cal. Labor Code
§§1194, 1194.2, 1997, 1197.1, 1198; IWC
Wage Order No. 4);**
- 2. FAILURE TO PROVIDE TIMELY OFF
DUTY MEAL PERIODS (Cal. Labor Code
§§226.7, 512; IWC Wage Order No. 4);**
- 3. FAILURE TO PROVIDE REST
PERIODS (Cal. Labor Code §226.7; IWC
Wage Order No. 4);**
- 4. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(Cal. Labor Code §226);**
- 5. FAILURE TO PAY WAGES DUE UPON
TERMINATION (Cal. Labor Code §§201-
203);**
- 6. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. Labor Code §2802);**
- 7. FAILURE TO PAY ACCRUED AND
UNUSED VACATION PAY (Cal. Labor
Code §§201, 227.3);**

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8. **UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.); and**
9. **PRIVATE ATTORNEY GENERAL ACT (PAGA)**
DEMAND FOR A JURY TRIAL

All allegations in this First Amended Complaint are based upon information and belief except for those allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

DAVID CANCINO (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by Metro Eighteen, Inc. (along with DOES 1 - 100, collectively “Defendants”). Plaintiff brings this action on behalf of himself, and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to pay minimum wages due to rounding, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to issue accurate wage statements, failure to pay wages due on termination, failure to reimburse business expenses, and failure to pay accrued and unused vacation pay.

2. Plaintiffs have worked as employees for Defendant in Los Angeles, California. While working, Plaintiffs have been forced to endure stressful and illegal workplace conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like his co-workers whom Defendant also employed during the applicable limitations period, spend their workdays working for Defendant, under illegal and highly regimented circumstances. That regimen results from Defendant’s insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs failing to pay minimum wages, refusing to provide meal periods, refusing to provide rest breaks, not paying the required extra hour for missed meal and rest breaks, failing to reimburse business expenses, failing to pay accrued and unused vacation pay and by using other unlawful stratagems to ensure that labor costs remain artificially low.

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4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, minimum wages due to illegal rounding, late and missed rest break wages, wages due to discharged or quitting employees, penalties for failure to provide accurate itemized wage statements, failure to reimburse business expenses, failure to pay accrued and unused vacation pay and interest, attorneys' fees, costs, and expenses.

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

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

JURISDICTION AND VENUE

7. This Court has jurisdiction over this First Amended Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* §382, and *Business & Professions Code* §§17200 *et seq.* Plaintiff David Cancino brings this First Amended Complaint on his own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Los Angeles and because Defendant owned and operated their businesses in the County of Los Angeles.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

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- 1 (a) An individual over age 18 and a resident of Los Angeles County,
2 California;
- 3 (b) Employed as an hourly employee for Defendant in Los Angeles, California;
- 4 (c) Did not receive minimum wages due to illegal rounding in violation of
5 *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and Wage Order 4;
- 6 (d) Did not receive the meal periods required by *Labor Code* §266.7 and Wage
7 Order 4;
- 8 (e) Did not receive the rest periods required by *Labor Code* §266.7 and Wage
9 Order 4;
- 10 (f) Did not receive accurate wage statements as mandated by *Labor Code* §226;
- 11 (g) When terminated from his employment, he did not receive his final
12 paychecks within the time limits prescribed by *Labor Code* §201;
- 13 (h) Was not reimbursed for business expenses as required by *Labor Code*
14 §2802; and
- 15 (i) Was not paid for accrued and unused vacation pay as required by *Labor*
16 *Code* §§201, 227.3.

17 **DEFENDANT**

18 10. Plaintiff is informed and believes, and based on that information and belief,
19 alleges, Defendant Metro Eighteen, Inc. is, and at all times mentioned herein was:

- 20 (a) A California corporation, with a principal place of business at 3450 3rd St.,
21 Unit #4C, San Francisco, California 94124. Defendant has been authorized to
22 do business and has been doing business in the County of Los Angeles;
- 23 (b) The former employer of Plaintiff and the current and former employer of the
24 putative Class members;
- 25 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 26 (d) Failed to pay Plaintiff and all putative Class members minimum wages due to
27 illegal rounding;

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1 (e) Failed to provide Plaintiff and all putative Class members with meal and rest
2 periods, failed to provide Plaintiff and all putative Class Members with
3 accurate itemized wage statements and failed to timely issue final paychecks
4 to Plaintiff and all putative Class Members;
5 (f) Failed to reimburse for business expenses; and
6 (g) Failed to pay accrued and unused vacation pay. Each of these was a violation
7 of the Labor Code.

8 11. The true names and capacities, whether individual, corporate, subsidiary,
9 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
10 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
11 *Civil Procedure* §474. Plaintiff will seek leave to amend his Complaint to allege the true names
12 and capacities of DOES 1 through 100, inclusive, when they are ascertained.

13 12. Plaintiff is informed and believes, and based on that information and belief
14 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
15 reside in or are authorized to do, or are otherwise doing, business in the State of California.
16 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
17 conduct business in the County of Los Angeles. Each of the Defendants DOES 1 through 100
18 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
19 alter ego and/or representative of one or more of the other Defendants named herein, and acting
20 with permission, authorization, and/or ratification and consent of the other Defendants.

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

25 14. Plaintiff is informed and believes, and based on that information and belief
26 alleges, that Defendants named in this First Amended Complaint, including DOES 1 through
27 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or
28 employees of each of the other Defendants and that each Defendant was acting within the

1 course and scope of his, hers or its authority as the agent, servant and/or employee of each of
2 the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the
3 Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

4 15. Plaintiff is informed and believes, and based on that information and belief
5 alleges, that the Defendants named in this First Amended Complaint, including DOES 1
6 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together
7 among themselves and entered into a combination and systemized campaign of activity to *inter*
8 *alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in
9 derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the
10 Class, in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their
11 conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and
12 belief, and to all appearances, Defendants, and each of them, represented a unified body so that
13 the actions of one Defendant were accomplished in concert with, and with the knowledge,
14 ratification, authorization and approval of each of the other Defendants.

15 **CLASS ALLEGATIONS**

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

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

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

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

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

B. Maintenance of the Action

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

C. The Class Requisites

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

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

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

20. The persons who comprise the Class are so numerous that joining all of them is impracticable, and jointly adjudicating their claims will benefit the parties and the Court.

1 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
2 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
3 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
4 Plaintiff are experienced, qualified and generally able to conduct complex class action
5 litigation.

6 21. The Court should permit the action to be maintained as a class action under
7 *Code of Civil Procedure* §382 because:

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

1 to protect their interests, by, for example, potentially exhausting
2 the funds available from Defendant, and
3 (g) Defendant has acted or refused to act on grounds generally applicable to
4 the Classes, making final injunctive relief appropriate for the Class as a
5 whole.

6 22. Plaintiff contemplates eventually issuing notice to the proposed Class Members
7 that would set forth the subject and nature of the action. The Defendant's own business records
8 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
9 any further notices may be required, Plaintiff would contemplate using additional media and/or
10 mailing.

11 **GENERAL ALLEGATIONS**

12 23. At all times material hereto, Defendant has been and is a home theater smart
13 automation business.

14 24. Plaintiff and members of the Class were employed by Defendant as home
15 theater installers and cabling installers in California at various times during the Class Period.

16 **THE CONDUCT**

17 25. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
18 Plaintiff and members of the Class wages and compensation owed under California law.

19 26. Starting in or about June 2021 and continuing to May 2022, Defendant
20 employed Plaintiff on an hourly basis as a Home Theater Installer in Los Angeles, California.

21 27. While employed by Defendant as a Home Theater Installer, Plaintiff was paid
22 \$30.00 per hour.

23 28. The employment by Defendant of the Class Members, and each of them, is
24 governed by Industrial Welfare Commission Wage Order 4, which covers those persons
25 employed in the professional, technical, clerical, mechanical and similar occupations.

26 29. Under California law, non-exempt employees, as defined by the applicable
27 Wage Order, are entitled to minimum wages, a 30-minute lunch period for each 10 hours
28 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.

1 30. Non-exempt employees are also entitled to one hour's pay at their regular pay
2 rate for each day the requisite rest and/or meal periods are not provided.

3 31. Plaintiff and the Class members were routinely not afforded any meal/rest
4 breaks, and/or their meal/rest breaks were interrupted. If afforded, meal breaks were routinely
5 late.

6 32. Defendant unlawfully rounded down or "shaved" the hours worked by
7 employees such that they were not paid for all hours worked.

8 33. Defendant required Plaintiff and the Class to use their personal cell phones for
9 work-related purposes both off-the-clock and on-the-clock. On a monthly basis, Plaintiff and
10 Class members were required to use their cell phones for off-the-clock work, such as answering
11 Defendant's phone calls and text messages.

12 34. On several occasions each month, Defendant required Plaintiff and Class
13 Members to work off the clock for between 30 to 60 minutes each time, answering emails,
14 attending workshops and Zoom meetings.

15 35. As a result of Defendant's failure to pay employees for required minimum
16 wages due to illegal rounding and off the clock work, the wage statements issued to the
17 employees did not comply with *Labor Code* §226 and the California Industrial Welfare
18 Commission ("IWC") applicable Wage Order in that they did not accurately reflect all wages
19 earned and due and owing.

20 36. As a further result of Defendant's failure to pay employees minimum wages due
21 to illegal rounding and off-the-clock work, when the employees left their employ, they were not
22 timely paid all wages due them, as required by *Labor Code* §§201, 202 and the applicable
23 Wage Order. Further, it was the practice of Employers to not pay employees the final
24 paychecks within the time periods mandated by *Labor Code* §§201, 202 and Wage Order 4.

25 37. Defendant failed to reimburse Plaintiff and members of the Class for business-
26 related expenses, such as cell phone use.

27 38. Defendant failed to timely pay Plaintiff and members of the Class accrued and
28 unused vacation pay.

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FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING

**(IWC Wage Order No. 4; Labor Code §§1194, 1194.2, 1997, 1197.1, 1198 By Plaintiff
Against Defendant and Does 1 through 100)**

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

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

41. *Labor Code* §1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* §1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 4-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

42. Pursuant to Wage Order 4, Defendant is required to pay the members of the Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

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1 43. Furthermore, pursuant to *Labor Code* §1198, “[t]he maximum hours of work
2 and the standard conditions of labor fixed by the commission shall be the maximum hours of
3 work and the standard conditions of labor for employees. The employment of any employee for
4 longer hours than those fixed by the order or under conditions of labor prohibited by the order
5 is unlawful.”

6 44. Defendant failed to satisfy minimum wage requirements because they
7 improperly rounded down Plaintiff’s hours to reflect a lower number of hours resulting in
8 failure to compensate Plaintiff properly for “all hours worked” and consequently underpaid
9 Plaintiff for the actual hours Plaintiff and members of the Class worked in violation of *Labor*
10 *Code* §§1197, 1198 and Wage Order 4.

11 45. Defendant, as a matter of established company policy and procedure, at each
12 and every one of the offices owned and/or operated by Defendant, consistently:

13 a. Administered a uniform company policy and practice as to the rounding
14 policies regarding the members of the Class; and

15 b. Rounded down the actual time worked and recorded by the members of the
16 Class, so that during the course of their employment, the members of the Class
17 were paid less than they would have been paid had they been paid for actual
18 recorded time rather than “rounded” time.

19 46. Defendant’s time rounding policies had a disproportionately negative impact on
20 Plaintiff and the members of the Class.

21 47. On a monthly basis, Plaintiff and Class members were required to use their cell
22 phones for off-the-clock work such as answering Defendant’s phone calls and text messages.

23 48. Further, on several occasions each month, Defendant required Plaintiff and
24 Class Members to work off the clock for between 30 to 60 minutes each time, answering
25 email, attending workshops and Zoom meetings.

26 49. Defendant’s pattern, practice and uniform administration of corporate policy
27 regarding illegal employee compensation as described herein is unlawful and creates an
28 entitlement, pursuant to Labor Code §218, to recovery by Plaintiff and the members of the

1 Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at
2 the appropriate rate.

3 50. *Labor Code* §1194.2 allows an employee to recover liquidated damages in an
4 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
5 *Code* §1194. Where an employee, such as Plaintiff and the other Class members, are not paid
6 for all hours worked under *Labor Code* §1194, the employee may recover minimum wages for
7 the time associated with the overtime for which they received no compensation. *See Sillah v.*
8 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
9 suing for failure to pay overtime could recover liquidated damages under §1194.2 if they also
10 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
11 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

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

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

20 **SECOND CAUSE OF ACTION**

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

22 **(IWC Wage Order No. 4; Labor Code §§226.7, 512 By Plaintiffs Against Defendant and**
23 **Does 1 through 100)**

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

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

1 employee to work during a meal or rest break or recovery period mandated pursuant to an
2 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
3 Commission..."

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

6 56. IWC Wage Order No. 4-2001 (11)(A) provides, in relevant part: "No employer
7 shall employ any person for a work period of more than five (5) hours without a meal period of
8 not less than 30-minutes, except that when a work period of not more than six (6) hours will
9 complete the day's work the meal period may be waived by mutual consent of the employer and
10 the employee."

11 57. IWC Order No. 4-2001 (11)(c) further provides, in relevant part: "Unless the
12 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
13 considered an 'on duty' meal period and counted as time worked."

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

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

22 59. The Labor Code and Wage Order provisions cited above require California
23 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
24 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
25 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
26 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
27 the fifth hour of their shifts.

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1 60. Plaintiff and members of the Class routinely worked during their meal period,
2 were interrupted during their meal period and/or meal periods were routinely late. Plaintiff and
3 Class Members were required to work during their meal breaks because there was a lot of work
4 to do. *See Augustus v. ABM Security Services, Inc.*, 2 cal. 5th 257, 270-273 (2016) (holding that
5 on-duty rest breaks violate California law).

6 61. As alleged herein, Defendant failed to relieve employees of duties for timely
7 meal breaks throughout the Class Period, Plaintiff and the members of the Class were routinely
8 required to work through their meal period at the fifth and sixth hour of their shifts at the
9 direction of Defendant and/or with their endorsement, encouragement, knowledge and
10 acquiescence. Moreover, Defendant failed to inform employees of their rights to off-duty
11 thirty-minute meal periods before the fifth or even sixth hour of their shifts and instead
12 discouraged the taking of timely meal periods. When Plaintiff and Class members worked 10-
13 12 hours per day, Defendant did not afford them second meal periods.

14 62. When Plaintiff and Class members missed their meal breaks, Defendant added a
15 meal break on their time clock records to make it seem like they took meal breaks.

16 63. Under California law, employers must also record their employees' meal
17 periods: "Every employer shall keep accurate information with respect to each employee,
18 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
19 operations cease ... need not be recorded." Where the employer has failed to keep records
20 required by statute, the consequences of such failure should fall on the employer, not the
21 employee. In such a situation, imprecise evidence by the employee can provide a sufficient
22 basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727 (1988). Inasmuch as
23 Defendant had an obligation under the record-keeping requirements of the Wage Order to track
24 meal periods unless "all work ceases", Defendant knew or should have known its employees
25 were regularly missing meal periods during the Class Period.

26 64. Defendant has a policy or practice of failing to ensure that Plaintiff and
27 members of the class take the meal periods required by California Labor Code §226.7 and
28 Wage Order 4.

65. By their actions in not affording Plaintiff and Class Members meal periods Defendant violated Cal. Lab. Code §226.7(b) and section 11 of Wage Order 4 as to the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendant failed to provide employees with statutory timely off-duty meal periods.

66. Defendant also has a policy or practice of failing to pay each of their employees who was not provided with a meal period as required an additional one hour of compensation at each employee's regular rate of pay.

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

68. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages, attorneys' fees and penalties and other appropriate relief due to Defendant's violations of the California Labor Code and IWC Wage Order 4.

THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

(IWC Wage Order No. 4; Labor Code §226.7 By Plaintiffs Against Defendant and Does 1 through 100)

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

70. Labor Code §226.7 and Wage Order 4 provide that employers shall authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four hours of work, or major fraction thereof.

71. Plaintiff and members of the Class were required to work during their rest breaks. They were never afforded any rest breaks.

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72. Plaintiff and Class Members worked during their rest breaks in violation of *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 270-273 (2016) (holding that on-duty rest breaks violate California law).

73. Labor Code §226.7 and Wage Order 4 provide that if an employer fails to provide an employee with rest periods in accordance with those provisions, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest periods were not so provided.

74. Defendant has intentionally and improperly denied rest periods to Plaintiff and the Class in violation of Labor Code §226.7 and Wage Order 4.

75. At all times relevant hereto, Defendant failed to provide rest periods as required by Labor Code §226.7 and Wage Order 4.

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

FOURTH CAUSE OF ACTION

FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE

ITEMIZED STATEMENTS

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

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

78. Pursuant to IWC Wage Order 4, Defendant was the employer of Plaintiff and the Class.

79. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 4, Defendant is required to maintain and provide accurate records relating to employee compensation including all formulas and production records used to calculate wages due.

80. Defendant is further required to provide, *inter alia*, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (1) gross wages earned;

1 (2) all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for
2 which the employee is being paid; (5) the name of the employee; and (6) the name and address
3 of the legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

4 81. Section 226(e) provides that an employee is entitled to recover \$50 for the
5 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
6 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
7 periods in which the employer knowingly and intentionally failed to provide accurate itemized
8 statements to the employee causing the employee to suffer injury.

9 82. Notwithstanding these provisions, Defendant has engaged in a uniform practice
10 of refusing to maintain and provide the accurate records and wage statements required by
11 California law.

12 83. Throughout the Class Period, Defendant intentionally and knowingly provided
13 Plaintiff and other members of the Class with weekly itemized wage statements containing
14 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
15 that the payments owed to Plaintiff and the members of the Class for minimum wages due to
16 rounding, off the clock work, untimely or missed meal and rest periods, were not included in
17 gross wages earned by Plaintiff and members of the Class. Further, Defendant failed to furnish
18 Plaintiff and the Class, upon payment of wages, itemized statements accurately showing the
19 number of hours worked and the rates paid.

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

22 85. Plaintiff and members of the Class were damaged by these failures because,
23 among other things, the failures led them to believe that they were not entitled to minimum
24 wages, pay for meal and rest periods not provided, even though they were so entitled, and these
25 failures hindered them from determining the amounts of wages owed to them.

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

28

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

4 **FIFTH CAUSE OF ACTION**

5 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

6 **(Labor Code §§201-203 By Plaintiffs Against Defendant and Does 1 through 100)**

7 88. Plaintiff and the Class reallege and incorporate by reference all of the allegations
8 set forth in this First Amended Complaint.

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

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

15 91. Plaintiff and the Class were discharged and/or resigned from Defendant's
16 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

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

19 **SIXTH CAUSE OF ACTION**

20 **REIMBURSEMENT OF BUSINESS EXPENSES**

21 **(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)**

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

24 94. Labor Code §2802 requires employers to indemnify employees for all necessary
25 expenditures incurred by employees in the discharge of their duties.

26 95. At all times relevant herein, Defendant was aware that Plaintiff was using his
27 personal cell phone for business both off and on the clock but failed to indemnify Plaintiff for
28 all his business-related expenses, including wear and tear expenses, in accordance with Labor

Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their cell phones for work-related purposes.

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

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

SEVENTH CAUSE OF ACTION

(Failure to Pay Accrued and Unused Vacation Pay in Violation of Cal. Labor Code §§201, 227.3 By Plaintiff Against Defendant and Does 1 through 100)

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

99. California Labor Code section 227.3 requires an employer that provides paid vacation, including Paid Time Off, to an employee to pay to the employee all vested and unused Paid Time Off as wages upon the employee's termination. Pursuant to California Labor Code section 201, such wages must be paid immediately at the time of discharge.

100. At all relevant times herein, Defendant had a policy whereby Plaintiff and members of the Class accrued vacation time and/or paid time off. Defendant's Employee Manual provides at 29: "METRO EIGHTEEN INC., provides a combined Vacation/Sick/Personal Time Off policy, hereafter referred to as PTO. The company believes that taking time off is vital for employee wellbeing and strongly encourages employees to do so. In accordance with that, employees will accrue PTO based on their individual tenure accrual rate for every hour worked, every hour of PTO taken, as well as for paid company holidays."

101. During their employment by Defendant, Plaintiff and members of the Class were eligible to receive vacation pay and/or PTO pay pursuant to the above PTO pay policy.

102. At all relevant times herein, Defendant had a policy and practice of failing to pay all accrued, vested and unused vacation time and/or paid time off upon Plaintiff's and Class members' separation from employment.

103. Defendant terminated Plaintiff's employment in May 2022. At the time of his employment, Plaintiff had accrued significant Paid Time Off, which he had not yet used.

104. Defendant did not pay Plaintiff all of his vested and unused vacation as wages immediately upon his termination.

105. Defendant is liable to Plaintiff and the members of the Class for payment of all vested and unused vacation time, including Paid Time Off, paid at Plaintiff's and the members of the Class's regular rates of pay as of the date of termination, plus penalties, interest, attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

**(Unfair Competition in Violation of Business & Professions Code §§17200 *et seq.* By
Plaintiffs Against Defendant and Does 1 through 100)**

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

107. Pursuant to applicable IWC Wage Orders, Defendant was the employer of Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business & Professions Code §17021.

108. The Business & Professions Code defines unfair competition as any unlawful, unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay minimum wages due to rounding; (2) pay Plaintiff and the Class meal periods not provided, (3) pay Plaintiff and the Class rest periods not provided, (4) furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial Welfare Commission requirements, (5) pay Plaintiff and the Class wages due when leaving their employ, (7) reimburse business expenses, and (8) pay accrued and unused vacation pay, all in violation of Business & Professions Code §§17200 *et seq.*

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

110. All the acts described herein are violations of, among other things, the Labor Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Business & Professions Code §§17200 *et seq.*

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

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

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

NINTH CAUSE OF ACTION

(Damages Pursuant to Private Attorney General Act Against Employers)

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

115. Plaintiff bring this action on his own behalf and on behalf of all current and former employees of Defendants who were employed in California for the previous four years seeking to recover unpaid wages, including but not limited to unpaid overtime, meal period violations, and rest periods violations as set forth in this pleading.

116. On March 1, 2023, Plaintiff, pursuant to California Labor Code §§2699, et seq., by and through his attorneys, uploaded a Private Attorney General Act (“PAGA”) claim to the State of California Labor and Workforce Development Agency (“LWDA”) and sent a letter via Certified Mail Return Receipt Requested to the defendant.

117. More than 65 days have passed since the above letter, and Plaintiff's counsel has not received any notice from the LWDA stating an intention to prosecute Plaintiff's PAGA claims.

118. Plaintiff has, therefore complied with the administrative exhaustion requirements of PAGA.

119. Plaintiff seeks Labor Code penalties, attorney's fees, and costs, in an amount according to proof at trial, as provided by the Labor Code Private Attorney General Act.

PRAYER FOR RELIEF

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

1. For compensatory damages in the amount minimum wages due to Plaintiff and Class Members, according to proof;

2. For one (1) hour of pay at the regular rate of compensation for Plaintiff and Class Members for each workday that a meal and/or rest period was not provided;

3. For compensatory damages in the amount of Plaintiff and Class Members' cell phone expenses for business purposes and/or reimbursement of monies incurred while performing Defendant's business-related duties plus interests, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);

4. For an award of consequential damages in Plaintiff and Class Members' favor and against Defendant, in an amount to be proven at trial;

- 1 5. For Vacation Pay or Paid Time Off pursuant to Labor Code §201;
- 2 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 3 7. For payment to Plaintiff and Class Members of waiting time penalties pursuant
- 4 to *Cal. Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
- 5 termination or layoff, multiplied by the total amount of days elapsed between the date of the
- 6 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
- 7 maximum of 30 days' pay, according to proof;
- 8 8. For specific relief enforcing waiting time penalties of 30 days of per diem wages
- 9 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
- 10 9. For prejudgment interest accrued on all due and unpaid minimum wages from
- 11 the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a),
- 12 according to proof;
- 13 10. For statutory penalties pursuant to *Cal. Lab. Code* §§558, 226.7, 218.6
- 14 according to proof;
- 15 11. For reasonable costs, including attorneys' fees, in an amount according to proof
- 16 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802 and/or *Cal. Code of*
- 17 *Civ. Proc.* §1021.5;
- 18 12. For an award of restitution of wages to Plaintiff and Class Members in an
- 19 amount equal to the amount of wages owed and unpaid, according to proof;
- 20 13. For injunctive relief requiring Defendant to comply with Labor Code
- 21 1198.5(b)(1);
- 22 14. For reasonable costs, including attorneys' fees, in an amount according to proof
- 23 pursuant to *Cal. Labor Code* §2699(g);
- 24 15. For injunctive relief ordering the continuing unfair business acts and practices to
- 25 cease, as the Court deems just and proper;
- 26 16. For other injunctive relief ordering Defendants to notify Plaintiff and Class
- 27 Members that they have not been paid the proper amounts in accordance with California law;
- 28 and

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

DEMAND FOR JURY TRIAL

Plaintiff David Cancino hereby respectfully requests a trial by jury for all claims and issues raised in his First Amended Complaint that may be entitled to a jury trial.

Date: May 8, 2023

LIPELES LAW GROUP, APC

By:  _____
Jasmine J. Badawi, Esq.
Kevin A. Lipeles, Esq.
Thomas H. Schelly, Esq.
Attorneys of record for Plaintiff,
David Cancino

PROOF OF SERVICE

I certify and declare that I am over the age of 18 years and not a party to this action and that my place of employment is in the County of Los Angeles, State of California, located at 880 Apollo St., Suite 336, El Segundo, California 90245.

On this date hereon, I served a true copy of the following document(s):

FIRST AMENDED COMPLAINT

☐ by personally delivering it to the person(s) indicated below in the manner as provided by Rule of the California Rules of Civil Procedure; ☐ by transmitting it via facsimile machine to a telephone number listed below and known or represented to me to be the receiving telephone number for the facsimile copy transmission of the parties/persons/firms listed below; ☒ by transmitting it via electronically to the electronic mail address listed below; ☐ by overnight delivery service to be delivered the next day to the parties/persons/firms listed below; ☐ by United States Mail – First Class Postage to the parties/persons/firms listed below:

Denis Kenny, Esq.
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ATTORNEYS FOR DEFENDANT
METRO EIGHTEEN, INC.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on May 8, 2023, at El Segundo, California, 90245.

Nicole Bathon

Nicole Bathon