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FILED
Superior Court of California
County of Los Angeles
01/28/2026
David W. Slayton, Executive Officer / Clerk of Court
By: T. Carter Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DEMARIO UPSHAW, individually and on behalf of all individuals similarly situated,

Plaintiff,

vs.

SPENCER SECURITY GROUP, INC, a California corporation; RICHARD RYAN SPENCER, an individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 25STCV33633

FIRST AMENDED CLASS ACTION COMPLAINT

1. **FAILURE TO COMPENSATE ALL HOURS WORKED IN VIOLATION OF INDUSTRIAL WELFARE COMMISSION ORDER AND CAL. LABOR CODE §§ 200, 226, 500, 510, 1194, 1197, AND 1198;**
2. **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1182.12, 1194, 1194.2, 1197;**
3. **FAILURE TO PROVIDE PROPER WAGE STATEMENTS IN VIOLATION OF CAL. LABOR CODE § 226;**
4. **FAILURE TO PAY COMPENSATION UPON SEPARATION OF EMPLOYMENT IN VIOLATION OF CAL. LABOR CODE § 201-203;**
5. **VIOLATIONS OF CAL. B&P CODE §§ 17200, *ET SEQ.*;**
6. **VIOLATION OF LABOR CODE §§ 2698, ET**

SEQ. ("PAGA")

DEMAND FOR JURY TRIAL

Plaintiff DEMARIO UPSHAW, an individual and on behalf of all individuals similarly situated ("Plaintiff"), hereby brings this Class Action Complaint for Damages against Defendants SPENCER SECURITY GROUP, INC ("SPENCER"), a California corporation; RICHARD RYAN SPENCER, an individual; and DOES 1 through 50, inclusive, (collectively, "Defendants") and states and alleges as follows:

JURISDICTION AND VENUE

1. This action is properly filed in Los Angeles County because the acts and omissions that give rise to Plaintiff's claims took place in Los Angeles County, California, as Plaintiff was employed by Defendants in Los Angeles County, California, and Defendants transact business in this County.

2. This Court has jurisdiction over Defendants because Defendants have sufficient minimum contacts with and regularly conduct business within the State of California, specifically in the County of Los Angeles.

3. Pursuant to California Code of Civil Procedure section 395(a), venue is proper in the County of LOS ANGELES because DEFENDANTS' obligations and liability arose, at least in part, therein, and because the alleged injuries sustained by PLAINTIFF occurred in the County of LOS ANGELES.

THE PARTIES

4. Plaintiff was, at all times relevant to this Complaint, an adult individual living and working in Los Angeles County, California.

5. At all times relevant to this Complaint, Defendant SPENCER SECURITY GROUP, INC ("SPENCER SECURITY") is and was a California corporation operating a business within the State of California, specifically in the Counties of Los Angeles and Orange.

6. At all times relevant to this Complaint, Defendant RICHARD RYAN SPENCER ("SPENCER") is and was an individual resident of the State of California, and the CEO, CFO, and owner of SPENCER SECURITY.

7. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the fictitious names DOES 1–50 but prays for leave to amend and serve such fictitiously named

Defendants pursuant to California Code of Civil Procedure section 474 once their names and capacities become known.

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1–50 are the partners, agents, owners, shareholders, managers, principals or employees of Defendants and/or were acting on behalf of Defendants.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by or is attributable to Defendants and/or DOES 1–50, each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent the policy of, all Defendants.

10. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages herein alleged.

11. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

ALTER EGO, AGENCY, AND JOINT EMPLOYER

12. SPENCER owned and/or controlled the businesses operated by SPENCER SECURITY, and furthermore, SPENCER exercised control over the labor practices of each and every one of the employees (inclusive of Plaintiff) of each and every one of their said interests, and caused the violations at issue in this Complaint.

13. Based on the foregoing allegations, SPENCER, in fact, caused violations at-issue in this Complaint, thereby creating individual liability under Labor Code § 558.1.

14. Pursuant to the provisions of Labor Code § 558, the liability of SPENCER would include any and all amounts sufficient to recover any and all missed rest break premiums, unpaid wages, and other penalties to Plaintiff and the Class Members.

15. As further referenced hereinbelow, the viability of obtaining liability of individuals by this method was discussed by the California Supreme Court in *Reynolds v. Bement* (2005) 36 Cal.4th

1075, 1089 where the court noted that individual liability against non-employers could be obtained through the use of § 558.

16. PLAINTIFF is informed and believes, and based thereon alleges, that there exists such a unity of interest and ownership between SPENCER SECURITY, SPENCER, and DOES 1-50 that the individuality and separateness of defendants has ceased to exist.

17. PLAINTIFF is informed and believes, and based thereon alleges, that despite the formation of purported corporate existence, SPENCER SECURITY, SPENCER, and DOES 1-50 are, in reality, one and the same, including, but not limited to because:

a. SPENCER SECURITY is or was completely dominated and controlled by SPENCER and DOES 1-50, who personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden and currently hide behind SPENCER SECURITY to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

b. SPENCER and DOES 1-50 have acted on behalf of SPENCER SECURITY, who violate, or cause to be violated, the provisions regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 203, 226, 226.7, 510, 1194, 1197, or 2802.

c. SPENCER and DOES 1-50 have acted on behalf of SPENCER SECURITY, who violate, or cause to be violated, the provisions regulating rest breaks in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 226.7, and 512.

d. SPENCER and DOES 1-50 have acted on behalf of SPENCER SECURITY who violate, or cause to be violated, the provisions regulating reimbursement of necessary business expenses in any order of the Industrial Welfare Commission, or violate, or cause to be violated, California Labor Code Sections 2802.

e. SPENCER and DOES 1-50 derive actual and significant monetary benefits by and through SPENCER SECURITY as the funding source for their own personal expenditures.

f. Plaintiff is informed and believes that SPENCER, SPENCER SECURITY, and DOES

1-50, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

g. Plaintiff is informed and believes that SPENCER SECURITY does not or did not comply with all requisite corporate formalities to maintain a legal and separate corporate existence.

h. Plaintiff is informed and believes, and based thereon alleges, that the business affairs of SPENCER, SPENCER SECURITY, and DOES 1-50 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion.

i. SPENCER SECURITY is, and at all times relevant hereto was, used by SPENCER and DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and was, the alter ego of SPENCER and DOES 1-50. The recognition of the separate existence of SPENCER SECURITY and/or SPENCER would not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiffs for violations of the Labor Code. The corporate existence of SPENCER, SPENCER SECURITY, and DOES 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18. Accordingly, SPENCER SECURITY constitutes the alter egos of SPENCER and DOES 1-50, and the fiction of their separate corporate existence must be disregarded.

19. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that SPENCER SECURITY, SPENCER, and DOES 1-50 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of SPENCER SECURITY, SPENCER, and DOES 1-50. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

FACTUAL ALLEGATIONS

20. Plaintiff worked for Defendants as an hourly, non-exempt employee in the position of "Security Guard" since on or around May 2024 until June 27, 2025.

21. Plaintiff worked at two affordable housing locations in Los Angeles County, which were 1777 Magnolia Avenue, Long Beach, CA 90813 and 11815 Wilmington Avenue, Los Angeles, CA 90059. Plaintiff only worked in Los Angeles County.

22. Plaintiff's hours varied, but he typically worked at least 8 hours per day, Monday through Friday.

23. Since the beginning of his employment, Plaintiff and the Class Members were regularly required to work outside of their normal scheduled shifts in order to cover other employees' shifts. Approximately 2 to 3 times per week, Plaintiff would have to wait 5-25 minutes after his shift to wait for the next Security Guard to arrive. However, Plaintiff and Class Members were not compensated at all for this waiting time.

24. Despite the fact that these events would push Plaintiff and the Class Members' total working hours for the week over 40 hours and more than eight (8) hours a day, Defendants never compensated Plaintiff and the Class Members with overtime rates.

25. Instead, Plaintiff and similarly aggrieved employees recorded their hours using the "When I Work" application and manually logged their hours, which accurately reflected over 40 hours per week and more than eight hours a day. However, Defendants would reduce any numbers above 40 hours down to precisely 40 hours, thereby denying Plaintiff and similarly aggrieved employees overtime wages and compensation for off-the-clock work.

26. Additionally, Plaintiff and Class Members were compensated at rates below the minimum wage in the applicable jurisdiction. As described above, Plaintiff worked in Los Angeles County. The applicable minimum wage in Los Angeles County from May 2024 to July 2024 was $17.27 per hour. But Plaintiff and the Class were only paid $16.00 per hour during that time period. From July 2024 to July 2025, the applicable minimum wage in Los Angeles County was $17.81 per hour. But Plaintiff and the Class were only paid $16.50 per hour during that time period.

27. As a result of Defendants' failure to pay all hours worked and overtime wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and the Class Members.

28. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing, and utilizing the employment practices and policies outlined above. Defendants' utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair business practices deprives Plaintiff and the Class Members of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

29. As a direct result of the wage and hour violations herein alleged, Plaintiff and the Class Members have suffered, and continue to suffer, substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at the time of trial.

CLASS ACTION ALLEGATIONS

30. Plaintiff brings this action as a class action on behalf of the following defined Class:

The Class: All individuals who have been, or currently are, employed by Defendants as "non-exempt employees" during the Class Period.

31. "Class Period" is defined as the time from November 14, 2021, through the date that judgment is entered, based upon information and belief that the violations, as described more fully hereinafter, began long before November 14, 2021, and are continuing. Plaintiff and members of Class herein reserve the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

32. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during the Class Period, dozens of Class members have been employed by Defendants as non-exempt

employees in the State of California. Because so many persons have been employed by Defendants in this capacity, the members of the Plaintiffs' Class are so numerous that joinder of all members is impossible and/or impracticable.

33. Commonality: Common questions of law, in fact, exist as to all members of the Plaintiffs' Class and predominate over any questions affecting solely individual members of the Plaintiffs' Class. Among the questions of law and fact, that are relevant to the adjudication of Class members claims are as follows:

(a) Whether Defendants had/have policies and/or practices that result in hours worked not being properly compensated;

(b) Whether Defendants unlawfully failed to properly calculate and pay overtime compensation due and owing to the Plaintiff and members of the Class in violation of Labor Code § 1194;

(c) Whether Defendants' policy and/or practice of failing to accurately pay overtime to Plaintiff and members of the Class violates applicable provisions of California Law, including Labor Code sections, applicable Industrial Welfare Commission Orders, and applicable State Regulations;

(d) Whether Defendants had/have a policy and/or practice that results in the presentation of inaccurate wage statements to Plaintiff and the Class;

(e) Whether Defendants unlawfully and/or willfully failed to furnish Plaintiff and Class members with accurate, itemized wage statements upon payment of wages in violation of Labor Code § 226;

(f) Whether Plaintiff and Class members sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief; and,

(g) Whether Defendant violated the Unfair Competition Law of California, §17200, *et seq.*, by violating the above-cited provisions, and treating Plaintiff and Class members unfairly by failing to pay all wages due and for all hours worked, failing to reimburse for

business expenses; failing to provide meal and rest breaks; failing to furnish an accurate, itemized wage statement upon payment of wages.

34. Typicality: Plaintiff's claims are typical of the members of the Plaintiff's Class. Plaintiff, like other members of the Class working for Defendants in California, was subjected to Defendants' policies and/or practices set forth above. Plaintiff's job duties were, and are, typical of those of other Class members.

35. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in both class action and employment litigation.

36. Questions of law or fact common to Class members predominate over any questions solely affecting individual Class members and class action is superior to other available methods for the fair and efficient adjudication of this controversy.

37. Class action treatment will allow a large number of similarly situated Class members to simultaneously and efficiently prosecute his common claims in a single forum without the needless duplication of effort and expense that numerous individual actions would entail.

38. In addition, a class action will serve the important public interest of permitting Class members harmed by Defendants' unlawful policies and/or practices to effectively pursue recovery of the sums owed to them.

39. Plaintiff knows of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE ALL HOURS WORKED IN VIOLATION OF INDUSTRIAL WELFARE COMMISSION ORDER NO. 4 AND LABOR CODE §§200, 226, 500, 510, 1194, 1197, AND 1198

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

40. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

41. At all times relevant herein, Defendants were required to compensate its non-exempt employees for all hours worked, pursuant to Industrial Welfare Commission Order 4, and Labor Code §§ 200, 226, 500, 510, 1197, 1194 and 1198.

42. As alleged above, Plaintiff and the Class were not paid the correct minimum wage or overtime wage for all hours worked.

43. Under the aforementioned wage orders and regulations, Plaintiff and the Class are entitled to recover compensation for all hours worked, but not paid, during the Class Period, plus reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5, 1194, and penalties pursuant to Labor Code §§ 203 and 226.

44. In violation of state law, Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial.

45. Plaintiff and the Class are thus entitled to recover nominal, actual and compensatory damages in amount according to proof at time of trial, but in amounts in excess of the jurisdiction of this Court.

46. As a proximate result of the aforementioned violations, Plaintiff and the Class have been damaged in an amount according to proof at time of trial.

47. Defendants' conduct described herein violates Industrial Welfare Commission Order 9, and Labor Code §§ 200, 203, 218.5, 226, 558, 1194, and 1198. Therefore, pursuant to 12 CCR § 11040 and Labor Code §§ 203, 218.5, 226, 558, 1194 and 1198, Plaintiff and the Class are entitled to recover damages for the nonpayment of wages of all hours worked that were improperly deducted and/or not counted as a result of Defendants' policies, liquidated damages for underpayment of minimum wages, penalties, reasonable attorneys' fees, expenses, and costs of suit.

48. WHEREFORE, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1182.12, 1194, 1194.2, 1197

(By PLAINTIFF AGAINST ALL DEFENDANTS)

49. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

50. Pursuant to Labor Code § 1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage.

51. At all relevant times, Defendants failed and refused to pay Plaintiff and the Class the legal minimum wage in the State of California, as set forth in Labor Code §1182.12. Under California law, Plaintiff and the Class are entitled to at least the minimum wage for every hour worked.

52. Defendants' failure to pay the legal minimum wage to Plaintiff and the Class as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff and the Class in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the straight time compensation paid and applicable minimum wage, including interest thereon.

53. As a direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to his damage in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

54. Defendants have committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice, and in conscious disregard of Plaintiff and the Class' rights. Plaintiff and the Class are thus entitled to recover nominal, actual and compensatory damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

55. Pursuant to Labor Code § 1194, Plaintiff requests that the court award reasonable attorneys' fees and costs incurred by Plaintiff in this action.

56. In addition, pursuant to Labor Code §1194.2, Plaintiff and the Class are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

57. WHEREFORE, Plaintiff requests relief as hereinafter provided.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE PROPER WAGE STATEMENTS

IN VIOLATION OF CAL. LABOR CODE §226

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

58. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

59. Labor Code §226(a) sets forth reporting requirements for employers when they pay wages, as follows:

"Every employer shall . . . at the time of each payment of wages, furnish his or her employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee . . . (8) the name and address of the legal entity that is the employer…"

Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4000), and shall be entitled to an award of costs and reasonable attorneys' fees."

60. Defendants failed to accurately record the regular and overtime hours worked by Plaintiff and the Class, and total wages due.

61. Plaintiff and the Class were damaged by this failure to provide accurate wage statements because, among other things, Plaintiff was unable to determine the proper amount of wages actually owed to him, and whether he had received full compensation therefore.

62. Plaintiff requests recovery of Labor Code § 226(e) penalties according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code §226(e), and all other damages, attorneys' fees, costs, expenses and interest permitted by statute.

63. WHEREFORE, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION

FAILURE TO PAY COMPENSATION UPON SEPARATION OF EMPLOYMENT IN VIOLATION OF CAL. LABOR CODE § 201-203

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

64. Plaintiff repeats and re-alleges the allegations set forth above and incorporates the same by reference as though fully set forth herein.

65. Labor Code § 201 provides, in relevant part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

66. Labor Code § 202 provides, in relevant part, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

67. Pursuant to Labor Code § 201, upon Class members' separations, Defendants were required to pay all earned wages.

68. Defendants failed to compensate Class members their entitled wages by failing to compensate them for all hours worked including minimum and overtime wages, and failing to provide wage statements reflecting the accurate number of hours worked per pay period. The Class members' wages remained unpaid even after their separation from employment.

69. The Class Members are entitled to "waiting time" penalties under Labor Code § 203.

WHEREFORE, Plaintiff requests relief as hereinafter provided.

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FIFTH CAUSE OF ACTION

VIOLATIONS OF CAL. B&P CODE §§ 17200, *et seq*.

(By PLAINTIFF AGAINST ALL DEFENDANTS)

70. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

71. Section 17200 of the California Business and Professions Code prohibits any unlawful, unfair or fraudulent business act or practice.

72. Plaintiff and the Class have suffered and continues to suffer injury in fact and monetary damages as a result of Defendants' actions. The actions by Defendants as herein alleged amount to conduct which is unlawful and a violation of law. As such, said conduct amounts to unfair business practices in violation of Business and Professions Code § 17200, *et seq*.

73. Defendants' conduct as herein alleged has damaged Plaintiff by denying his wages due and payable, by failing to reimburse for business expenses, by failing to provide meal and/or rest periods, and by failing to provide proper wage statements. Defendants' actions are thus substantially injurious to Plaintiff causing him injury in fact and loss of money.

74. As a result of such conduct, Defendants have unlawfully and unfairly obtained monies due to Plaintiff.

75. The amount of wages due Plaintiff can be readily determined from Defendants' records. Plaintiff is entitled to restitution of monies due and obtained by Defendants during the period of last 4 years as a result of Defendants' unlawful and unfair conduct.

76. Defendants' course of conduct, acts, and practices in violation of the California law as mentioned in each paragraph above constitutes a separate and independent violation of §17200 etc. of the Business and Professions Code.

77. The harm to Plaintiff of being wrongfully denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and practices and, therefore, Defendants' actions described herein constitute an unfair business practice or act within the meaning of Business and Professions Code § 17200.

78. Defendants' conduct described herein threatens an incipient violation of California's

wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

79. Defendants' course of conduct described herein further violates Business and Professions Code 17200 in that it is fraudulent, improper, and unfair.

80. The unlawful, unfair, and fraudulent business practices and acts of Defendants as described herein above have injured Plaintiff in that he was wrongfully denied the timely and full payment of wages due to him.

81. WHEREFORE, Plaintiff requests relied as hereinafter provided.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 2698, ET SEQ. ("PAGA")

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

82. Plaintiff hereby re-alleges, and incorporates by reference as though set forth fully herein, the allegations contained in all preceding paragraphs.

83. On October 3, 2025, Plaintiff filed a notice with the Labor Workforce and Development Agency ("LWDA") at their website pursuant to the Private Attorney General Act, California Labor Code §§ 2698, et seq. ("PAGA") regarding Defendants. This notice was also sent to the Defendants that same day via certified mail. More than 65 days have elapsed since Plaintiff provided notice, but the Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice.

84. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699, pursuant to § 2699.3, for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 1194, 2802, 226, and 2699(f)(2).

85. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code including, but not limited to the following:

a. Defendants violated Industrial Welfare Commission Order No. 4 and Labor Code §§ 226.7 and 512, 516, 558 and 1198 by failing to provide all legally required meal and rest period premiums to Plaintiff and similarly aggrieved employees;

b. Defendants violated Industrial Welfare Commission Order No. 4 and Labor Code §§ 200, 226, 226.7, 500, 510, 1194, 1197, and 1198 by failing to pay Plaintiff and similarly aggrieved employees for all hours worked including overtime;

c. Defendants violated Labor Code § 226 by failing to provide Plaintiff and similarly aggrieved employees with accurate and compliant itemized wage statements;

86. California Labor Code section 1174 provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..."

87. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

88. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiffs' rights by violating various sections of the California Labor Code as set forth above. As set forth above, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable order of the IWC. Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees.

89. Pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3, 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved employees, and the State of California against Defendant, in addition to other remedies, for violations of California Labor Code sections 200, 201, 202, 203, 210, 226(a), 226.7, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198.

90. WHEREFORE, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For nominal damages;

2. For compensatory damages;

3. For equitable relief in the nature of declaratory relief, restitution of all monies due to Plaintiffs, and disgorgement of profits from the unlawful business practices of Defendants, and accounting;

4. For penalties permitted by Labor Code §§ 200, 201, 202, 203, 210, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and 2698 et seq. and all other applicable sections;

5. For interest accrued to date;

6. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 226, 1194, and 2698;

7. For reasonable attorneys' fees pursuant to Labor Code §§ 218.6, 226, 226.7, 1194, and 2698; and

8. For all such other and further relief that the Court may deem just and proper.

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DATED: January 28, 2026

LOYR, APC



Young W. Ryu, Esq.
Zachariah E. Moura, Esq.
Kee S. Mah, Esq.
Harley M. Phleger, Esq.
Attorneys for Plaintiff DEMARIO UPSHAW

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for themselves on all claims so triable.

DATED: January 28, 2026

LOYR, APC



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