

1 Ruben Guerra, Esq. (SBN 291446)
2 ruben@guerracasillas.com
3 Tizoc Perez-Casillas, Esq. (SBN 309981)
4 tizoc@guerracasillas.com
5 Guile Gomez, Esq. (SBN 340245)
6 guile@guerracasillas.com
7 **GUERRA & CASILLAS LLP**
8 617 South Olive Street, Suite 422
9 Los Angeles, California 90014
10 Telephone: (213) 437-9495
11 Facsimile: (213) 342-5503

12 Attorney for Plaintiff,
13 GLAUCO PEREZ OTERO

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David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 GLAUCO PEREZ OTERO, an individual,
17
18 Plaintiff,

19 v.

20 INTERNATIONAL CERTIFIED SAFETY
21 INC., a California corporation; and DOES 1
22 through 20, inclusive,
23
24 Defendants.

Case No. **23STCV16408**

COMPLAINT FOR DAMAGES FOR:

1. **FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
2. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
3. **FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802)**
4. **FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
5. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
6. **WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
7. **PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.);**
8. **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §1198.5); AND**
9. **UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.)**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

1 **COMES NOW PLAINTIFF, GLAUCO PEREZ OTERO**, and for causes of action against
2 the Defendants and each of them, alleges as follows:

3
4 **JURISDICTION**

5 1. This Court is the proper court, and this action is properly filed in Los Angeles County,
6 because Defendants' obligations and liability arise therein, because Defendants maintain offices and
7 transact business within Los Angeles County, and because the work that is the subject of this action was
8 performed by Plaintiff in Los Angeles County.

9
10 **THE PARTIES**

11 2. Plaintiff, GLAUCO PEREZ OTERO, is and at all times relevant hereto was a resident of
12 the County of Los Angeles, State of California.

13 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
14 hereto, INTERNATIONAL CERTIFIED SAFETY INC., (hereinafter referred to as "ICSI" or
15 "Employers") was and is a California corporation doing business at 1800 Studebraker Rd., Suite 700,
16 Cerritos, CA 90703, in the County of Los Angeles, State of California.

17 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
18 hereto, Employers owned and operated a private Security Guard company.

19 5. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
20 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
21 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
22 persons and are therefore subject to the jurisdiction of this Court.

23 6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
24 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
25 Commission Order No. 4-2001, and are each an "employer or other person acting on behalf of an
26 employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

27 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
28 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore

1 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
2 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
3 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
4 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
5 alleged hereinafter.

6 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
7 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
8 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
9 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
10 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
11 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

12 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
13 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
14 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
15 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
16 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
17 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
18 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
19 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
20 actually causing Plaintiff harm.

21 10. Whenever and wherever reference is made in this complaint to any act or failure to act by
22 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
23 and/or failures to act by each Defendant acting individually, jointly and severally.

24 11. Plaintiff filed his Private Attorneys General Act (“PAGA”) letter with the Labor and
25 Workforce Development Agency (“LWDA”) and has satisfied all administrative prerequisites with
26 respect to his PAGA cause of action.

1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 12. Plaintiff is informed and believes, and based thereon alleges, that such a unity of interest
3 and ownership exists between Employers and DOES 1-20 that the individuality and separateness of
4 defendants have ceased to exist.

5 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
7 but not limited to because:

8 a. Employers are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

12 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
13 through one another's unlawful conduct, and by using one another as the funding source for their own
14 personal expenditures.

15 c. Employers and DOES 1-20, while really one and the same, were segregated to
16 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
17 accomplishing some other wrongful or inequitable purpose.

18 d. Employers do not comply with all requisite corporate formalities to maintain a
19 legal and separate corporate existence.

20 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
23 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
24 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
25 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
26 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
27 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
28 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

14. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. 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.

16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

17. On or about June 2017, Employers hired Plaintiff to work as a security guard earning \$17.00 an hour.

18. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily until the end of his employment on or about March 31, 2023, at the age of 71.

19. Throughout most of Plaintiff's tenure with ICSI, Plaintiff was required to work 12 to 16-hour shifts. ICSI, however, failed to pay Plaintiff and all other security guards the required overtime rate, pursuant to the Labor Code.

20. From on or about February 2019 through March 2021, Plaintiff worked 14-hour shifts, 7 days a week, which is approximately 58 hours of overtime per week. Defendant, however, failed to pay

1 Plaintiff the appropriate overtime rate. Plaintiff received only Plaintiff's regular hourly wage rate for
2 these hours, with no overtime premium.

3 21. From on or about March 2021 to March 31, 2023, Plaintiff was working 12 to 16-hour
4 shifts, 4 to 5 days a week averaging 56 hours per week, which is approximately 16 hours of overtime per
5 week. But Defendant did not pay Plaintiff the appropriate overtime rate for this time period either.
6 Plaintiff received only Plaintiff's regular hourly wage rate for these hours, with no overtime premium

7 22. Plaintiff complained about Defendant's failure to pay the required overtime rate, however,
8 Defendants simply responded with empty promises that it would pay owed overtime wages in the future.

9 23. Additionally, throughout Plaintiff's tenure, Plaintiff was not permitted to, and not advised
10 of Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial
11 portion thereof as required by the Labor Code and Industrial Welfare Commission Orders.

12 24. Throughout Plaintiff's employment, Plaintiff also did not receive uninterrupted statutory
13 30-minute meal periods or a second uninterrupted statutory 30-minute meal period for days on which
14 Plaintiff worked at least 10 hours, which was every day that Plaintiff worked.

15 25. Throughout Plaintiff's employment, Plaintiff was also required to use his personal
16 cellphone in order to discharge his job duties satisfactorily, but Defendant failed to reimburse him at all
17 for this use.

18 26. As a result of the above, Plaintiff is entitled to unpaid wages, unpaid overtime wages, meal
19 and rest break premiums, and waiting time penalties. Plaintiff is also entitled to pursue PAGA penalties
20 on behalf of the state of California for these Labor Code violations.

21 27. Defendants also failed to provide Plaintiff with accurate and timely, itemized wage
22 statements throughout Plaintiff's employment.

23 28. Defendants' conduct described herein was undertaken, authorized, and/or ratified
24 Defendant's officers, directors and/or managing agents, including, but not limited to * and those identified
25 herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or
26 create policy for Defendants. The aforementioned conduct of said managing agents and individuals was
27 therefore undertaken on behalf of Defendants who further had advanced knowledge of the actions and
28 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by

1 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
2 and designated herein as DOES 1 through 20, inclusive.

3 29. Plaintiff's claims amount to damages and penalties in a sum in excess of the jurisdictional
4 minimum of this Court.

5 30. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
6 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
7 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
8 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
9 Court.

10
11 **FIRST CAUSE OF ACTION**
12 **FOR FAILURE TO PAY WAGES DUE**
13 **LABOR CODE §§201, 1182.12, 1194, 1194.2**
14 **AGAINST ALL DEFENDANTS**

15 31. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
16 though set forth in full herein.

17 32. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
18 required by 8 Code of Regulations §11040, as set forth hereinabove. As alleged herein, Defendants
19 routinely failed to pay Plaintiff his overtime rate for hours worked beyond eight in a day or 40 per week.

20 33. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
21 Code of Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

22 34. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
23 proximate result of Defendant's failure and refusal to pay said compensation. Plaintiff is entitled to
24 recover such amounts, plus interest thereon, attorneys' fees and costs.

25 35. Labor Code §558(a) provides that any person acting on behalf of an employer who
26 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
27 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
28 employee for each pay period in which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting
2 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
3 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

4 36. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated
5 above based upon Defendants' underpayment of minimum and overtime wages. Within the one year
6 immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code
7 §558 26 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which
8 Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$2,550.00.

9
10 **SECOND CAUSE OF ACTION**
11 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
12 **LABOR CODE §§510, 1194**
13 **AGAINST ALL DEFENDANTS**

14 37. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
15 though set forth in full herein.

16 38. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
17 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
18 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
19 hours in a single day. It also requires employers to pay their non-exempt employees overtime
20 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
21 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
22 consecutive day of work.

23 39. At all relevant times, Defendants required Plaintiff to work more than eight hours per
24 day and/or more than 40 hours per workweek.

25 40. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
26 compensation required by Labor Code §510, 8 Code of Regulations §11040, and Industrial Welfare
27 Commission Order No. 4-2001.

1 41. In the four years last past, Plaintiff worked 24 hours of overtime each week, all of which
2 should have been paid at 1.5 times Plaintiff's regular hourly wage rate for hours worked in excess of 8
3 hours in a day and 2.0 times Plaintiff's regularly hourly wage rate for hours worked in excess of 12 in a
4 day. Plaintiff should have also been paid 1.5 times for all hours, up to 8 hours, worked in excess of 8 on
5 the seventh consecutive day of work in a work week and 2.0 times Plaintiff's regular hourly rate for all
6 hours worked in excess of 8 on the seventh consecutive day of work in a work week. Defendant failed to
7 pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately
8 preceding the filing of this complaint:

9 a. From approximately February 1, 2019, to February 28, 2021 (approximately 108
10 weeks), Plaintiff's hourly overtime rate was \$25.50. During this time period, Plaintiff worked 14-hour
11 shifts, seven days a week, but was paid only his regular rate for all hours worked, no premium. As such,
12 Plaintiff is owed 40 hours of overtime and 18 hours of double time for this time period. Plaintiff is owed
13 \$8.50 for each overtime hour worked and \$17.00 for each double time hour worked, totaling \$646 per
14 week or \$69,768.00, for this time period.

15 b. From approximately March 1, 2021, to on or about March 31, 2023 (approximately
16 109 weeks), Plaintiff's hourly overtime rate was still \$25.50. During this time period, Plaintiff worked
17 on average, 56 hours a week, 14-hour days, but was paid only his regular rate for all hours worked, no
18 premium. As such Plaintiff is owed 16 hours of overtime and 8 hours of double time for this time period.
19 Plaintiff is owed \$8.50 for each overtime hour worked and \$17.00 for each double time hour worked,
20 totaling \$272 per week or \$29,648.00, for this time period

21 42. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
22 Code §510, 8 Code Regulations §11040, and Industrial Welfare Commission Order No. 4-2001.

23 43. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
24 of \$99,416.00, above and beyond the unpaid wages sought in the preceding cause of action for these same
25 hours.

26 44. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
27 direct and proximate result of Defendant's failure and refusal to pay said compensation. Plaintiff is
28 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

THIRD CAUSE OF ACTION
FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES
LABOR CODE §2802
AGAINST ALL DEFENDANTS

45. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

46. Pursuant to Labor Code §450(a), “no employer...may compel or coerce any employee...to patronize his or her employer, or any other person, in the purchase of any thing of value.”

47. Pursuant to Labor Code §2802(a), “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

48. Plaintiff was required by Defendants to expend Plaintiff’s personal funds because of the duties required by Defendants, as alleged hereinabove.

49. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff for all necessary expenditures incurred in the performance of Plaintiff’s duties.

50. Defendants have failed and refused to reimburse Plaintiff for all necessary business expenditures, including, but not limited to, for use of his personal cellphone.

51. As a proximate result of the aforementioned violations of Labor Code §§450(a) and 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary aforementioned expenditures.

52. As a proximate result of the aforementioned violations of Labor Code §§450(a) and 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial, but estimated as follows: approximately \$50.00 a month for every month worked. In the four years preceding this action, therefore, Defendants have at the very least failed to reimburse Plaintiff for approximately \$2,400.00.

53. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary expenditure or loss.

1 54. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
2 reasonable attorneys' fees and costs incurred in this action.

3
4 **FOURTH CAUSE OF ACTION**
5 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
6 **LABOR CODE §§226.7, 512**
7 **AGAINST ALL DEFENDANTS**

8 55. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
9 though set forth in full herein.

10 56. Labor Code §512 requires employers to provide every employee with an uninterrupted
11 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

12 57. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
13 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
14 thereof.

15 58. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
16 was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on each
17 day of work. In the four years last past, Plaintiff regularly worked in excess of twelve hours per day, and
18 was thereby entitled to take two uninterrupted 30-minute meal periods and three 10-minute rest periods
19 on each day of work.

20 59. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
21 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
22 applicable sections of 8 Code of Regulations §11040 and Industrial Welfare Commission Order No. 4-
23 2001, as follows:

24 a. From approximately February 1, 2019, to February 28, 2021, Plaintiff's statutory
25 30-minute meal periods were missed, interrupted, or cut short approximately 7 times per week for 108
26 weeks, or on approximately 756 days. During this same time period, Plaintiff was deprived of one or
27 more of Plaintiff's statutory 10-minute rest periods on approximately 756 days.

1 b. From approximately March 1, 2021, to March 31, 2023, Plaintiff's statutory 30-
2 minute meal periods were missed, interrupted, or cut short approximately 4 times per week for 109 weeks,
3 or on approximately 436 days. During this same time period, Plaintiff was deprived of one or more of
4 Plaintiff's statutory 10-minute rest periods on approximately 436 days

5 60. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
6 Code of Regulations §11040 and Industrial Welfare Commission Order No. 4-2001. Consequently,
7 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
8 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
9 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
10 that Plaintiff was denied such rest periods, calculated as follows:

11 a. From approximately February 1, 2019, to March 31, 2023 Defendants failed to
12 provide Plaintiff with an uninterrupted statutory meal period on approximately 1,192 separate days.
13 Consequently, Plaintiff is owed one hour of pay at \$17.00 for each day, or \$20,264.00, plus interest
14 thereon, for unpaid missed or interrupted meal periods. During this same time period, Defendants failed
15 to provide Plaintiff with the statutory rest period on approximately 1,192 separate days. Consequently,
16 Plaintiff is owed one hour of pay at \$17 for each day, or \$20,264.00, plus interest thereon, for unpaid rest
17 periods. Thus, Plaintiff is owed a total of \$40,528.00, plus interest thereon, for unpaid meal and rest
18 periods for this time period.

19 61. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
20 period is \$40,528.00.

21 62. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
22 breaks as a direct and proximate result of Defendant's failure and refusal to pay said compensation.

23 63. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
24 such amounts in the combined amount of \$40,528.00, pursuant to Labor Code §226.7(b), plus interest
25 thereon and costs of suit.
26
27
28

FIFTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST ALL DEFENDANTS

64. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

65. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

66. In addition, thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

67. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not one paystub was provided to Plaintiff at all in violation of Labor Code §226.

68. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

69. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in

1 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
2 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
3 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
4 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
5 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
6 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

7 70. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
8 §226 approximately 26 times during the one year preceding the filing of this complaint. Consequently,
9 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
10 amount of \$4,000.00, whichever is greater.

11 71. In addition, thereto, for Defendant's 26 violations, Defendants are penalized \$250.00 for
12 the first violation, and the remainder of which Defendants are penalized \$1000.00 each, for a total due in
13 Labor Code §226.3 penalties of \$25,250.00.

14 72. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
15 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
16 applicable provisions, as well as attorneys' fees and costs.

17
18 **SIXTH CAUSE OF ACTION**
19 **FOR WAITING TIME PENALTIES**
20 **LABOR CODE §§201-203**
21 **AGAINST ALL DEFENDANTS**

22 73. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
23 though set forth in full herein.

24 74. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
25 other compensation due immediately upon termination or within 72 hours of resignation, as required.
26 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
27 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
28

1 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
2 203.

3 75. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
4 203.

5 76. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
6 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
7 more than \$9,180.00 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of
8 \$306, inclusive of overtime.

9 77. Based on Defendants' conduct as alleged herein, Defendants are liable for \$9,180.00 in
10 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
11 fees and costs.

12
13 **SEVENTH CAUSE OF ACTION**
14 **FOR PRIVATE ATTORNEY GENERAL ACT**
15 **LABOR CODE §2699**
16 **AGAINST ALL DEFENDANTS**

17 78. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

19 79. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
20 Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties
21 for Defendants' violations of the California Labor Code.

22 80. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
23 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
24 previously pleaded in this Complaint.

25 81. On April 12, 2023, more than 65 calendar days before filing this Complaint, Plaintiff
26 provided written notice by certified mail to the Labor and Workforce Development Agency and to
27 Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
28 satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201,

202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, and 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

82. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

83. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

84. These penalties recoverable for Plaintiff alone totals approximately \$51,000.00. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

85. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

PENALTIES

86. 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 agency or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

- a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
2 violation; and

3 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent
4 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
5 §1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
6 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid
7 wages, and \$100 for each subsequent violation for each underpaid employee for each pay
8 period for which the employee was underpaid; and also an additional amount sufficient to
9 recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557
10 paid to the aggrieved employees. Within the one year immediately preceding the filing of this
11 Complaint, Defendants, and each of them, violated Labor Code §558 on 26 pay periods, the
12 first of which Defendants are penalized \$50.00, and the remainder of which Defendants are
13 penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$2,550.00;

14 c) As applicable, civil penalties under Labor Code §1197.1 (in addition to and entirely
15 independent and apart from any other penalty provided in the Labor Code) for violations of
16 Labor Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee
17 for each pay period the aggrieved employee was intentionally underpaid in addition to an
18 amount sufficient to recover underpaid wages, and \$250 for each subsequent violation for each
19 underpaid aggrieved employees regardless of whether the initial violation was intentionally
20 committed in addition to an amount sufficient to recover underpaid wages, with all wages
21 recovered pursuant to Labor Code §1197.1. Plaintiff may also recover penalties under § 1197.1
22 on behalf of herself and for the other aggrieved employees;

23 d) As applicable, civil penalties under Labor Code §98.6 (in addition to and entirely independent
24 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
25 §98.6, in the amount of \$10,000 per aggrieved employee for each violation of this section, to
26 be awarded to the employee or employees who suffered the violation;

27 e) As applicable, civil penalties under Labor Code §§201-203 (in addition to and entirely
28 independent and apart from any other penalty provided in the Labor Code), for any aggrieved

1 employee who was discharged or quit, and was not paid all earned wages at termination in
2 accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil
3 penalty of one day of pay, at the same rate, for each day that he or she was paid late, until
4 payment was/is made, up to a maximum of thirty (30) days;

5 f) As applicable, Labor Code §204 (in addition to an entirely independent and apart from any
6 other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
7 to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the
8 initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
9 violation plus 25 percent of the amount unlawfully withheld; and

10 g) As applicable, civil penalties under Labor Code §221 (in addition to an entirely independent
11 and apart from any other penalty provided in the Labor Code), for any aggrieved employee
12 who Defendants failed to pay all earned wages during employment, in the amount of a civil
13 penalty of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period
14 for each subsequent violation;

15 h) As applicable, Labor Code §510 (in addition to and entirely independent and apart from any
16 other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed
17 to pay overtime wages during employment, in the amount of a civil penalty of \$100 for the
18 initial violation, and \$200 for each aggrieved employee per pay period for each subsequent
19 violation plus 25 percent of the amount unlawfully withheld;

20 i) As applicable, Labor Code §§551 and 552 (in addition to and entirely independent and apart
21 from any other penalty provided in the Labor Code), for any aggrieved employee who
22 Defendants failed to pay overtime wages during employment, in the amount of a civil penalty
23 of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each
24 subsequent violation plus 25 percent of the amount unlawfully withheld;

25 j) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent
26 and apart from any other civil penalty provided in the Labor Code), for each violation of Labor
27 Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
28

violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

k) As applicable, Labor Code §226.7 (in addition to an entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

l) As applicable, Labor Code §512 (in addition to an entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who Defendants failed to pay all earned wages during employment, in the amount of a civil penalty of \$100 for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the amount unlawfully withheld;

m) As applicable, civil penalties under Labor Code §1102.5 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code §§1102.5, in the amount of \$10,000 for each aggrieved employee for each violation; and

n) As applicable, any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

87. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to the aggrieved employees.

88. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

89. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly

1 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
2 provide for a penalty, §§ 200, 226.3 and 558.

3 90. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
4 recovery of pre-judgment interest on all amounts recovered herein.

5 91. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to
6 Labor Code §§2699(g)(1) and any other applicable statute.

7
8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

10 **LABOR CODE §1198.5**

11 **AGAINST ALL DEFENDANTS**

12 92. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
13 though set forth in full herein.

14 93. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
15 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
16 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

17 94. On April 12, 2023, Plaintiff made a written request to inspect or receive a copy of
18 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

19 95. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and
20 payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff within
21 the time required by Labor Code §1198.5, or ever.

22 96. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
23 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

NINTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST ALL DEFENDANTS

97. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

98. Defendants' violations of 8 Code of Regulations §11040, Industrial Welfare Commission Order No. 4-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198.5, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

99. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

100. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof but estimated to be no less than \$1,000,000 as follows:

101. For penalties pursuant to Labor Code §226.8(b)-(c), in the amount of no less than \$25,000;

1 102. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
2 Industrial Welfare Commission Order No. 4-2001, and 8 Code of Regulations §11040, in the amount of
3 no less than \$99,416.00;

4 103. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
5 than \$2,550.00;

6 104. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the
7 amount of no less than \$2,400, plus interest;

8 105. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
9 in the amount of no less than \$40,528.00;

10 106. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

11 107. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
12 less than \$25,250.00;

13 108. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
14 than \$9,180.00;

15 109. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
16 \$51,000.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendant's aggrieved
17 employees, estimated to exceed \$500,000.00;

18 110. For statutory penalties pursuant to Labor Code §1198.5 in the amount of no less than
19 \$750.00;

20 111. For prejudgment interest on each of the foregoing at the legal rate from the date the
21 obligation became due through the date of judgment in this matter.

22 ///

23 ///

24 ///

25 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
26 amount according to proof, as follows:

27 112. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish
28 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

1 113. For injunctive relief compelling Defendants to report to federal and state authorities wages
2 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
3 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
4 this in an amount according to the proof;

5 114. For restitutionary disgorgement of profits garnered as a result of Defendant's unlawful
6 conduct, failure to pay wages and other compensation in accordance with the law;

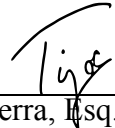
7 115. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
8 any other basis;

9 116. For post-judgment interest; and

10 117. For any other relief that is just and proper.

11
12 DATED: July 13, 2023

GUERRA & CASILLAS LLP

13
14 By: 

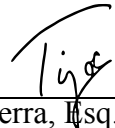
Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Guile Gomez, Esq.
Attorneys for Plaintiff
GLAUCO PEREZ OTERO

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18 **JURY TRIAL DEMANDED**

19 Plaintiff demands a trial of all issues by jury.

20
21 DATED: July 13, 2023

GUERRA & CASILLAS LLP

22
23 By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Guile Gomez, Esq.
Attorneys for Plaintiff
GLAUCO PEREZ OTERO