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

STEVEN YECK, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

INFORMATION TECHNOLOGY
PARTNERS, INC., a Wisconsin Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 23STCV13697
*[Assigned for all purposes to Hon. Lawrence
P. Riff, Dept. 7]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum and Regular Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Unlawful Deduction of Wages;
- (4) Failure to Timely Pay Final Wages;
- (5) Failure to Provide Accurate Itemized Wage Statements;
- (6) Unfair and Unlawful Competition;

PAGA CLAIMS

- (7) Failure to Pay Minimum and Regular Wages;
- (8) Failure to Pay Overtime Wages;
- (9) Unlawful Deduction of Wages;
- (10) Failure to Timely Pay Wages Each Period;
- (11) Failure to Timely Pay Final Wages;
- (12) Failure to Provide Accurate Itemized Wage Statements.

1 Plaintiff Steven Yeck (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employer(s), Defendants
5 Information Technology Partners, Inc., and DOES 1 through 20, inclusive, (collectively,
6 “Defendants”) on behalf of all current and former employees employed by Defendants in
7 California (the “Class” or “Represented Employees”), for Labor Code violations stemming from
8 Defendants’ failure to pay all wages owed, including minimum, regular, and overtime wages,
9 unlawful deductions of wages, failure to timely pay wages each period and upon separation of
10 employment, and failure to provide accurate itemized wage statements.

11 2. Plaintiff was employed by Defendants from approximately May 2022 through
12 April 2023 as an operations engineer, providing computer support to Defendants’ clients.

13 3. Plaintiff alleges on information and belief that the Represented Employees were
14 subjected to the same policies, working conditions, and corresponding wage and hour violations
15 to which Plaintiff was subjected during employment.

16 4. Plaintiff and the Represented Employees were not provided all minimum, regular,
17 and overtime wages due to Defendants’ failure to accurately record and compensate for all hours
18 worked. Additionally, earned wages were paid at less than the agreed upon amount.

19 5. Moreover, Plaintiff and Represented Employees had wages deducted for wire
20 transfer fees resulting from paying employees by wire transfer.

21 6. Plaintiff also alleges that he and the Represented Employees were not paid all
22 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
23 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
24 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
25 Employees at the time their employment ended with Defendants, including, but not limited to
26 minimum, regular, and overtime wages, sick pay wages, wage premiums, among others.
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1 7. Plaintiff further alleges that Defendants often failed to provide any wage
2 statement and when wage statements were provided, Defendant failed to provide accurate
3 itemized wage statements that fully complied with the requirements of Labor Code § 226(a).

4 8. Plaintiff alleges that Defendants' violations of the wage and hour components of
5 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
6 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
7 its competitors.

8 9. At all material times, Defendants and DOES 1 through 20 were and/or are the
9 Represented Employees' employers or persons acting on behalf of the Represented Employees'
10 employer, within the meaning of California Labor Code § 558, who violated or caused to be
11 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
12 hours and days of work in an IWC Wage Order and, as such, are subject to penalties for each
13 underpaid employee as set forth in Labor Code § 558 and under California law.

14 10. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
15 monetary relief against Defendants and each of them, on behalf of himself and the Represented
16 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
17 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 208,
18 210, 212, 218.6, 226, 226.3, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among
19 possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional
20 representatives throughout the State of California.

21 **II. JURISDICTION**

22 11. This Court has jurisdiction over the claims for relief of Plaintiff and the
23 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

24 **III. VENUE**

25 12. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
26 Procedure § 395(a). Defendants transact business in Los Angeles County and the unlawful acts
27 alleged herein have a direct effect on Plaintiff and the Represented Employees in Los Angeles
28 County. Furthermore, Defendants employed or employ Plaintiff and Represented Employees in

1 Los Angeles County.

2 **IV. PARTIES**

3 **Plaintiff**

4 13. Plaintiff and Class Representative Steven Yeck was employed by Defendants
5 from approximately May 2022 through April 2023 and performed work for Defendants in Los
6 Angeles County.

7 **Defendants**

8 14. Plaintiff is informed and believes and thereon alleges that Defendant Information
9 Technology Partners, Inc. is a Wisconsin corporation authorized to and doing business in Los
10 Angeles California. Plaintiff is also informed and believes that Defendant Information
11 Technology Partners, Inc. is and/or was the legal employer of Plaintiff and the Represented
12 Employees during the applicable statutory periods.

13 15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
14 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
15 inclusive, but on information and belief alleges that those Defendants are legally responsible for
16 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
17 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
18 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
19 Defendants when ascertained.

20 16. Plaintiff is informed and believes and thereon alleges that he and the Represented
21 Employees worked under the joint direction and control of Defendants and that Defendants, and
22 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,
23 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
24 each Defendant are legally attributable to the other Defendants. On information and belief, a
25 unity of interest and ownership between each Defendant exists such that all Defendants acted as
26 a single employer of Plaintiff and other Represented Employees.

27 17. Furthermore, Plaintiff is informed and believes and thereon alleges that
28 Defendants, and each of them, are an integrated enterprise and should be treated as a single

1 employer because these entities share an interrelation of operations, with common human
2 resources and personnel policies and shared common offices and facilities. Additionally,
3 Defendants also have a shared website, common management, a centralized control of labor
4 operations, and common ownership or financial control.

5 18. Plaintiff is informed and believes and thereon alleges that, in conducting
6 themselves in the manner described herein, Defendants, and each of them, were acting in active
7 concert with one another such that the acts of each were and are fully attributable to the others in
8 all material respects. Plaintiff is further informed and believes that at all relevant times
9 Defendants and each of them are now, and at all material times herein mentioned were, the
10 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
11 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
12 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
13 their remaining co-Defendants.

14 19. Plaintiff is further informed and believes that at all relevant times, Defendants
15 have been inadequately capitalized to conduct business, have failed to follow appropriate
16 corporate formalities, and have simply been a shell and instrumentality through which
17 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
18 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
19 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
20 separate existence of these corporate entities would permit abuse of the corporate privilege,
21 thereby sanctioning fraud and promoting injustice.

22 **V. CLASS ACTION ALLEGATIONS**

23 20. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 21. Plaintiff brings this action on behalf of himself and all others similarly situated as
26 a class action, pursuant to Code of Civil Procedure § 382.

27 22. The relevant time period for this class action is defined as the period beginning
28 four years prior to the filing of this action until class certification (the “Relevant Time Period”).

1 23. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
2 represent is defined as follows:

3 All current and former employees employed by Defendants
4 in California during the Relevant Time Period.

5 24. Plaintiff also seeks to represent the following subclasses:

6 **Waiting Time Penalties Subclass**

7 All Represented Employees who separated from their
8 employment with Defendants during the period three years
9 before the filing of this action and ending when final
10 judgment is entered.

11 **Wage Statement Penalties Subclass**

12 All Represented Employees during the period one year
13 before the filing of this action and ending when final
14 judgment is entered.

15 25. Plaintiff reserves the right to amend or modify the class description with greater
16 specificity or further division into subclasses or limitation to particular issues as appropriate.

17 26. Plaintiff, as Class Representative, is a member of the class and subclasses that he
18 seeks to represent.

19 27. This action has been brought and may properly be maintained as a class action
20 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
21 litigation and the proposed class is easily ascertainable from Defendants’ records.

22 28. **Numerosity:** The potential members of the Class as defined are so numerous that
23 a joinder of all Represented Employees is impracticable. Although the exact number is currently
24 unknown to Plaintiff, this information is easily ascertainable from Defendants’ records.

25 29. **Commonality:** There are questions of law and fact common to the class which
26 predominate over any questions affecting only individual members of the class, including
27 without limitation:
28

i. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to pay wages to Plaintiff and the Represented Employees for all hours worked;

ii. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to pay proper overtime wages to Plaintiff and the Represented Employees for hours above 8 and/or 12 per day and/or 40 per week;

iii. Whether Defendants violated California Labor Code and applicable IWC Wage Order by deducting wages from Plaintiff and Represented Employees.

iv. Whether Defendants violated California Labor Code and applicable IWC Wage Order by failing to pay Plaintiff and Represented Employees their wages without deduction.

v. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalties Subclass, whether such separation was voluntary or involuntary;

vi. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and the Wage Statement Penalties Subclass with complete, accurate, itemized wage statements;

vii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, and failure to timely pay final wages; and

viii. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

30. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, unlawfully deducting wages, failure to timely pay wages upon separation of employment, and failure to provide accurate itemized wage statements.

1 31. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
2 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
3 conflict with those of the Class. Class Representative's counsel are competent and experienced in
4 litigating large employment class actions and other complex litigation matters, including cases
5 like this case.

6 32. **Superiority of Class Action.** Class certification is appropriate because a class
7 action is superior to other available means for the fair and efficient adjudication of this
8 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
9 law and fact common to the Class predominate over any questions affecting only individual
10 members of the Class. Each Represented Employee has been damaged and is entitled to
11 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
12 treatment will allow those similarly situated persons to litigate their claims in the manner that is
13 most efficient and economical for the parties and the judicial system.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**

16 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

17 *Plaintiff and the Represented Employees Against All Defendants*

18 33. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
19 as if fully alleged herein.

20 34. Plaintiff and the Represented Employees were not exempt from the requirement
21 to be paid at least the applicable California minimum wage throughout the statutory period for
22 each hour worked.

23 35. Plaintiff and the Represented Employees were not provided proper minimum and
24 regular wages due to Defendants' failure to accurately record and compensate for all hours
25 worked. As a result of this policy and practice, Plaintiff and the Represented Employees were
26 required to perform off-the-clock work that Defendants either knew or should have known they
27 were performing. Moreover, due to instances where wages went unpaid or were deducted,
28 Plaintiff and Represented Employees were not paid the agreed upon amount of wages.

1 36. As a result of these policies and practices, Defendants failed to pay Plaintiff and
2 the Represented Employees for all hours worked.

3 37. Consequently, Defendants violated California Labor Code laws and minimum
4 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197.

5 38. Plaintiff is informed and believes and thereon alleges that Defendants
6 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
7 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

8 39. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
9 Represented Employees were entitled to be paid wages throughout the statutory period for each
10 hour worked, including proper minimum and regular wages, yet Defendants chose not to pay
11 them in accordance thereto.

12 40. At all material times, Defendants DOES 1 through 20 were and/or are the
13 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
14 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
15 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
16 Labor Code regulating hours and days of work respectively.

17 41. During employment of Plaintiff and the Represented Employees, Defendants
18 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

19 42. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
20 Employees have been damaged in amounts to be proven at trial.

21 43. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
22 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
23 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
24 at trial.

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1 51. At all material times, Defendants DOES 1 through 20 were and/or are the
2 employer of Plaintiff and the Represented Employees or were persons acting on behalf of said
3 employer(s), within the meaning of California Labor Code § 558, who violated or caused to be
4 violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California
5 Labor Code regulating hours and days of work respectively.

6 52. During the employment of Plaintiff and the Represented Employees, Defendants
7 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

8 53. As a result of Defendants' wrongful conduct, Plaintiff and the Represented
9 Employees have been damaged in amounts to be proven at trial.

10 54. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
11 all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against
12 Defendants in an amount to be proven at trial.

13 **THIRD CAUSE OF ACTION**

14 **UNLAWFUL DEDUCTION OF WAGES**

15 (Labor Code §§ 200, 212, 221)

16 *Plaintiff and the Represented Employees against All Defendants*

17 55. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 56. Plaintiff and the Represented Employees are and/or were employees of
20 Defendants who did not receive proper protections and benefits of the laws governing unlawful
21 deductions of wages.

22 57. Labor Code § 200 defines wages to include "all amounts for labor performed by
23 employees of every description, whether the amount is fixed or ascertained by the standard of
24 time, task, piece, commission basis, or other method of calculation." Labor Code § 212 states
25 that "(a) no person, or agent or officer thereof, shall issue in payment of wages due, or to become
26 due, or as an advance on wages to be earned: (1) any order, check, draft, note, memorandum, or
27 other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand,
28 without discount ..." Labor Code § 221 states that "[i]t shall be unlawful for any employer to

1 collect or receive from an employee any part of wages theretofore paid by said employer to said
2 employee.”

3 58. At all relevant times, Plaintiffs and Represented Employees were paid by wire
4 transfer with fees deducted from their wages in violation of California law. Additionally,
5 Plaintiff and Represented Employees were often paid less than what was agreed, in violation of
6 California law.

7 59. Defendants violated Labor Code §§ 212, and 221, every pay period because
8 Plaintiff and the Represented Employees were not provided with all wages earned by them as a
9 result of unlawful deductions.

10 60. At all relevant times herein, Defendants deducted wages, thereby receiving an
11 economic benefit.

12 61. By their willful deduction of wages earned by Plaintiff and the Represented
13 Parties, Defendants willfully violated Labor Code §§ 212 and 221. As a result of the Defendants’
14 wrongful conduct, Plaintiff and the Represented Employees have been damaged in amounts to be
15 proven at trial.

16 62. Also, as a direct result of Defendants’ violations of Labor Code §§ 212, and 221,
17 Defendants, and each of them, are liable to Plaintiff and the Represented Employees for unlawful
18 deduction of wages, penalties, costs, and interest.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO TIMELY PAY FINAL WAGES**

21 (Labor Code §§ 201 – 203)

22 *Plaintiff and the Waiting Time Penalties Subclass against All Defendants*

23 63. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 64. Plaintiff and the Waiting Time Penalties Subclass are and/or were employees of
26 Defendants who did not receive proper protections and benefits of the laws governing the timing
27 and payment of wages.
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65. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

66. Labor Code § 202 requires that the employer pay all wages earned and unpaid, without abatement or reduction, no later than 72 hours of receiving an employee's notice of intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

67. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than thirty (30) days.

68. At all relevant times, Defendants employed a policy and practice whereby Plaintiff and the Waiting Time Penalties Subclass were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 and 202.

69. Also, at all relevant times, Defendants engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Waiting Time Penalties Subclass upon separation of employment, including, but not limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums.

70. Plaintiff alleges that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay Plaintiff and the Waiting Time Penalties Subclass all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Waiting Time Penalties Subclass the above-described waiting time penalty, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code § 226)

Plaintiff and the Wage Statement Penalties Subclass against All Defendants

71. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

1 72. Plaintiff and the Wage Statement Penalties Subclass are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing the
3 provision of accurate itemized wage statements.

4 73. Labor Code § 226(a) requires an employer to provide its employees with itemized
5 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
6 inclusive dates of the pay period, the employee's name and the last four digits of his or her
7 Social Security number (or employee identification number), the name and address of the legal
8 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate by the employee.

10 74. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
11 and the Wage Statement Penalties Subclass due to violations including: failure to provide wage
12 statements at all, failure to accurately state total hours worked (for example, the wage statements
13 failed to accurately reflect the compensable hours worked); failure to accurately state gross
14 wages earned; failure to accurately state all deductions; failure to accurately state net wages
15 earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay);
16 failure to accurately state the corresponding number of hours worked at each hourly rate; and
17 failure to accurately identify the name and address of the legal entity of the employer.

18 75. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
19 each period due to the failure to pay and report premium wages for denied meal periods and rest
20 breaks under § 226.7.

21 76. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
22 to Plaintiff and the Wage Statement Penalties Subclass because Defendants failed to provide a
23 wage statement to Plaintiff and the Wage Statement Penalties Subclass that complied with the
24 requirements of Labor Code § 226(a).

25 77. Defendants' failure to provide the required writing deprived Plaintiff and the
26 Wage Statement Penalties Subclass of the ability to know, understand, and question the
27 calculation and rate of pay and hours used to calculate the wages paid by Defendants. Therefore,
28 Plaintiff and the Wage Statement Penalties Subclass had no way to dispute the resulting

1 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
2 Defendants. As a direct result, Plaintiff and the Wage Statement Penalties Subclass have suffered
3 and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost
4 interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
5 perform its obligation under state law, all to their respective damages in amounts according to
6 proof at trial.

7 78. As a result of Defendants' knowing and intentional failure to comply with Labor
8 Code § 226(a), Plaintiff and the Wage Statement Penalties Subclass have suffered an injury in
9 that each was prevented from knowing, understanding and disputing the wage payments paid to
10 them. Furthermore, Plaintiff and the Wage Statement Penalties Subclass have each suffered an
11 injury in that the failure to show all wages earned on the itemized wage statements resulted in
12 Plaintiff and the Represented Employees being denied all necessary deductions, payments, and
13 withholdings owed by the employer, including, but not limited to, the failure to make all
14 necessary contributions for unemployment benefits, social security benefits, proper payment of
15 taxes and withholdings, and other mandated state and federal benefits.

16 79. Plaintiff has also been injured as a result of having to bring this action to attempt
17 to obtain correct wage information following Defendants' refusal to comply with many of the
18 mandates of California's Labor Code and related laws and regulations.

19 80. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
20 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
21 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
22 attorney's fees and costs, to Plaintiff and the Wage Statement Penalties Subclass who were
23 injured by Defendants' failure to comply with Labor Code § 226(a). The exact amount of the
24 applicable penalty is all in an amount to be shown according to proof at trial.

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1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR AND UNLAWFUL COMPETITION**

3 (Business and Professions Code § 17200 *et seq.*)

4 *Plaintiff and the Represented Employees against All Defendants*

5 81. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 82. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
8 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
9 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
10 due to the unfair and unlawful business practices of Defendants as alleged herein.

11 83. Defendants, and each of them, are “persons” as defined under Business &
12 Professions Code § 17021.

13 84. As alleged herein, Defendants engaged in conduct that violated California’s wage
14 and hour laws, including failure to pay minimum, regular, and overtime wages, unlawfully
15 deducting wages, failure to timely pay wages upon separation of employment, and failure to
16 provide accurate and itemized wage statements all to decrease their costs and increase profits.

17 85. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
18 Employees wages and monies and other financial obligations to which they were entitled.

19 86. As a result of Defendants’ failure to comply with the Labor Code and IWC
20 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
21 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
22 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

23 87. Defendants’ violations of the California Labor Code and IWC Wage Orders and
24 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
25 practices because it was done in a systematic manner over a period of time to the detriment of the
26 Plaintiff and all others similarly-situated.

27 88. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
28 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.

1 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
2 of Civil Procedure § 1021.5.

3 89. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

9 90. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
10 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
13 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said
15 unfair, unlawful and/or fraudulent business practices.

16 91. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
17 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
18 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
19 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
20 Represented Employees are not obligated to establish individual knowledge of the unfair
21 practices of Defendants in order to recover restitution.

22 92. Plaintiff, individually, and on behalf of the Represented Employees, is further
23 entitled to and do seek a declaration that the above described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
26 the future.

27 93. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Represented Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

VI. PAGA CAUSES OF ACTION (Cal. Lab. Code. §§ 2698 – 2699.5)

94. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

95. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

96. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

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1 **SEVENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 97. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 98. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
8 be paid at least the applicable California minimum wage throughout the statutory period for each
9 hour worked.

10 99. As a result of the Defendants' policies and practices alleged herein, Plaintiff and
11 the Aggrieved Employees were not provided proper minimum and regular wages. Thus, Plaintiff
12 and the Aggrieved Employees were required to perform off-the-clock work that Defendants
13 either knew or should have known they were performing and, as a result of these policies and
14 practices, Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked.

15 100. Consequently, Defendants violated California Labor Code laws and minimum
16 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
17 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

18 101. Plaintiff is informed and believes and thereon alleges that Defendants
19 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
20 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

21 102. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **EIGHTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

3 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 103. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 104. Plaintiff and the Aggrieved Employees were employees of Defendants who did
8 not receive proper protections and benefits of the laws governing payment of overtime wages.

9 105. Labor Code § 204 requires that the employer timely pay all overtime wages to its
10 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
11 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
12 any one workweek shall be compensated at the rate of no less than one and one-half times the
13 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
14 in one workday shall be compensated at twice the regular rate of pay for an employee.

15 106. At all relevant times, Plaintiff and the Aggrieved Employees were required by
16 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
17 Defendants' policies and practices alleged herein, Defendants failed to compensate Plaintiff and
18 the Aggrieved Employees for all required overtime compensation.

19 107. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
20 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
21 Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per
22 week without proper overtime compensation.

23 108. Plaintiff is informed and believes and thereon alleges that Defendants
24 intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff and the
25 Aggrieved Employees in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

26 109. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

1 **NINTH CAUSE OF ACTION**

2 **UNLAWFUL DEDUCTION OF WAGES**

3 (Labor Code §§ 200, 212, 221)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 110. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 111. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing unlawful deduction of
9 wages.

10 112. Labor Code § 200 defines wages to include “all amounts for labor performed by
11 employees of every description, whether the amount is fixed or ascertained by the standard of
12 time, task, piece, commission basis, or other method of calculation.” Labor Code § 212 states
13 that “(a) no person, or agent or officer thereof, shall issue in payment of wages due, or to become
14 due, or as an advance on wages to be earned: (1) any order, check, draft, note, memorandum, or
15 other acknowledgement of indebtedness, unless it is negotiable and payable in cash, on demand,
16 without discount ...” Labor Code § 221 states that “[i]t shall be unlawful for any employer to
17 collect or receive from an employee any part of wages theretofore paid by said employer to said
18 employee.”

19 113. At all relevant times, Plaintiff and Aggrieved Employees were paid by wire
20 transfer with fees deducted from their wages in violation of California law. Additionally,
21 Plaintiff and Represented Employees were often paid less than what was agreed, in violation of
22 California law.

23 114. Defendants violated Labor Code §§ 212, and 221, every pay period because
24 Plaintiff and the Aggrieved Employees were not provided with all wages earned by them as a
25 result of unlawful deductions.

26 115. At all relevant times herein, Defendants deducted wages, thereby receiving an
27 economic benefit.
28

1 116. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **TENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

6 (Labor Code § 204)

7 *Plaintiff and the Aggrieved Employees against All Defendants*

8 117. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
9 as if fully alleged herein.

10 118. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
11 who did not receive proper protections and benefits of the laws regarding the timing of payment
12 of wages each period.

13 119. Labor Code § 204(a) states that all wages earned by a person are due and payable
14 twice during each calendar month, and further states that wages earned during the first through
15 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
16 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
17 the following month.

18 120. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
19 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
20 the wages are paid not more than seven calendar days following the close of the payroll period."

21 121. At all relevant times herein, Defendants did not provide Plaintiff and the
22 Aggrieved Employees with all wages due and owing each period within the time required by
23 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
24 Employees with all wages due and owing each pay period, including, but not limited to,
25 minimum, regular, and overtime wages within the time specified by Labor Code § 204.

26 122. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
27 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
28 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

1 **ELEVENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees against All Defendants*

5 123. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 124. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who did not receive proper protections and benefits of the laws governing the timing and
9 payment of final wages.

10 125. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 126. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 127. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 128. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
19 Employees with all wages due and owing upon separation of employment, including, but not
20 limited to, minimum, regular, and overtime wages, vacation and sick pay at the proper rates, and
21 within the time specified by Labor Code §§ 201 – 203.

22 129. Plaintiff alleges that, at all times material to this action, Defendants had a planned
23 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
24 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

25 130. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **TWELFTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees against All Defendants*

6 131. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
7 as if fully alleged herein.

8 132. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 133. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 134. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
18 and the Aggrieved Employees due to violations including: failure to accurately state total hours
19 worked (for example, the wage statements failed to accurately reflect the compensable hours
20 worked); failure to accurately state gross wages earned; failure to accurately state all deductions;
21 failure to accurately state net wages earned; failure to state the applicable hourly rates (including
22 the accurate overtime rate of pay); failure to accurately state the corresponding number of hours
23 worked at each hourly rate; and failure to accurately identify the name and address of the legal
24 entity of the employer.

25 135. Additionally, Defendants' wage statements directly violated Labor Code § 226(a)
26 each period due to the failure to pay and report premium wages for denied meal periods and rest
27 breaks under § 226.7.
28

1 136. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
6 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
7 follows:

8 1. As to the Seventh through Twelfth Causes of Action, the assessment of all
9 applicable and available remedies under PAGA;

10 2. That the First through Sixth Causes of Action be certified as a class action;

11 3. That Plaintiff be appointed as Class Representative;

12 4. That counsel for Plaintiff be appointed Class Counsel;

13 5. For all applicable statutory penalties recoverable under the First through Seventh
14 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
15 Orders of the Industrial Welfare Commission;

16 6. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
17 law, including those pursuant to the Labor Code;

18 7. For injunctive relief and/or restitution as provided by the Labor Code and
19 Business and Professions Code § 17200, *et seq.*;

20 8. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
21 201, 202, 203, 204, 208, 210, 212, 218.6, 221, 226, 226.3, 510, 558, 1194, 1197, 1198, and 1199,
22 among other sections inadvertently omitted;

23 9. For an award of damages in the amount of unpaid compensation including, but
24 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
25 thereon;

26 10. For pre- and post-judgment interest; and

27 11. For such other relief as the Court deems just and proper.
28

1 Dated: August 21, 2023

LAUBY, MANKIN & LAUBY LLP

2
3 BY:

Handwritten signatures of Brian J. Mankin and Misty M. Lauby.

4 Brian J. Mankin, Esq.
5 Misty M. Lauby, Esq.
6 Attorneys for Plaintiff
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On August 21, 2023, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

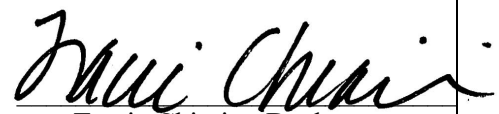
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 21, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

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