

Kevin A. Lipeles (Bar No. 244 275)
Thomas H. Schelly (Bar No. 217 285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
DENNIS LAURENCE TETZLOFF

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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BY: Rylee Grant
Rylee Grant, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DENNIS LAURENCE TETZLOFF, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

AIR CONTROL SPECIALTIES, INC.,
dba ACS MECHANICAL &
ELECTRICAL SERVICES, a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CIV SB 2307969

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING (Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 4)
2. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4)
3. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7; IWC Wage Order No. 4);
4. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226; IWC Wage Order No. 4);
5. FAILURE TO PAY WAGES DUE UPON TERMINATION (Cal. Labor Code §§201-203);
6. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);
7. FAILURE TO PAY FOR UNIFORM MAINTENANCE (Cal. Labor Code § 2802);
8. VIOLATION OF LABOR CODE §925; and
9. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.)

DEMAND FOR A JURY TRIAL

1 All allegations in this Complaint are based upon information and belief except for those
2 allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has ev-
3 identitary support or is likely to have evidentiary support after a reasonable opportunity for fur-
4 ther investigation and discovery.

5 DENNIS LAURENCE TETZLOFF ("Plaintiff") alleges the following:

6 1. This is a class action brought under California law by an individual who was
7 employed by Air Control Specialties, Inc. dba ACS Mechanical & Electrical Services, ("ACS"
8 or "Defendant") (along with DOES 1 through 100, collectively "Defendants"). Plaintiff brings
9 this action on behalf of himself and others similarly situated to recover wages from Defendant
10 due to Defendant's systematic failure to pay minimum wages due to rounding, failure to
11 provide meal and rest breaks (or pay the statutory compensation due), failure to issue accurate
12 wage statements, failure to pay wages due on termination, failure to reimburse business
13 expenses, failure to pay for uniform maintenance and violation of Labor Code section 925.

14 2. Plaintiffs have worked as employees for Defendant at Defendant's business in
15 Ontario, California. While working, Plaintiffs have been forced to endure stressful and illegal
16 workplace conditions created by Defendant's efforts to maximize profits and tightly control
17 labor costs.

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

26 4. Plaintiff brings this class action to recover, among other things, wages and
27 penalties from unpaid wages earned and due, including but not limited to, minimum wages due
28 to illegal rounding, late and missed rest break wages, wages due to discharged or quitting

1 employees, penalties for failure to provide accurate itemized wage statements, reimbursement
2 business expenses, reimbursement for uniform maintenance, remedies for violation of Labor
3 Code section 925, and interest, attorneys' fees, costs, and expenses.

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

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

12 JURISDICTION AND VENUE

13 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
14 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
15 *Professions Code* §§ 17200 *et seq.* Plaintiff Dennis Laurence Tetzloff brings this Complaint on
16 his own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

17 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
18 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
19 herein, occurred in the County of San Bernardino and because Defendant owned and operated
20 its businesses in the County of Bernardino.

21 THE PARTIES

22 PLAINTIFF

23 9. At all times relevant hereto, Plaintiff was:

- 24 (a) An individual over age 18 and a resident of San Bernardino County,
25 California;
26 (b) Employed as an hourly employee for Defendant in Ontario, California;
27
28

- 1 (c) Did not receive minimum wages due to illegal rounding in violation of
2 *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198 and the applicable
3 Wage Orders;
4 (d) Did not receive the meal periods required by *Labor Code* §266.7 and the
5 applicable Wage Orders;
6 (e) Did not receive the rest periods required by *Labor Code* §266.7 and the
7 applicable Wage Orders;
8 (f) Did not receive accurate wage statements as mandated by *Labor Code*
9 §226;
10 (g) When he was terminated from his employment, did not receive his final
11 paycheck within the time limits prescribed by *Labor Code* §201;
12 (h) Was not reimbursed for business expenses as required by *Labor Code*
13 §2802;
14 (i) Was not paid for uniform maintenance; and
15 (j) Was forced to sign a non-disclosure agreement which violates Labor
16 Code section 925. Each of these was a violation of the *Labor Code*.
17

18 **DEFENDANT**

19 10. Plaintiff is informed and believes, and based on that information and belief,
20 alleges, Defendant ACS is, and at all times mentioned herein was:

- 21 (a) A California corporation, with a principal place of business at 2141 S.
22 Parco Ave., Ontario, California. Defendant has been authorized to do
23 business and has been doing business in the County of San Bernardino;
24 (b) The former employer of Plaintiff and the current and former employer of
25 the putative Class members;
26 (c) Paid Plaintiff and all Class Members on an hourly basis;
27 (d) Failed to pay Plaintiff and all putative Class members minimum wages
28 due to illegal rounding;

- 1 (e) Failed to provide Plaintiff and all putative Class members with meal and
2 rest periods, failed to provide Plaintiff and all putative Class members
3 with accurate itemized wage statements and failed to issue final
4 paychecks timely to Plaintiff and all putative Class members;
5 (f) Failed to reimburse for business expenses;
6 (g) Failed to pay for uniform maintenance; and
7 (h) Was forced to sign a non-disclosure agreement which violates Labor
8 Code section 925. Each of these was a violation of the *Labor Code*.

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

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

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

27 14. Plaintiff is informed and believes, and based on that information and belief
28 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,

1 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
2 the other Defendants and that each Defendant was acting within the course and scope of his,
3 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
4 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
5 Class, for the damages sustained as a proximate result of their conduct.

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

17 **CLASS ALLEGATIONS**

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

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

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

24 (b) "All persons who were hourly paid employees of Defendant and worked for
25 ACS in California and left the employ of Defendant at any time during the
26 period commencing on the date that is within one (1) year prior to the filing of
27 this Complaint and continuing through the present date (the "Class Period")."
28

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

4 **B. Maintenance of the Action**

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

8 **C. The Class Requisites**

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

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

- 12 (a) The persons who comprise the Class are so numerous that the joinder of all
13 those persons is impracticable and the disposition of their claims as a Class
14 will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
16 that are raised in this Complaint are common to the Class and will apply
17 uniformly to every Class member;
- 18 (c) The claims of the representative Plaintiff are typical of the claims of each
19 Class member. Plaintiff, like all Class members, has sustained damages
20 arising from Defendant's violations of the laws of the State of California.
21 Plaintiff, and the Class members, were and are similarly or identically
22 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
23 pattern of misconduct engaged in by the Defendant;
- 24 (d) The representative Plaintiff has, and will continue to, fairly and adequately
25 represent and protect the interests of the Class and has retained counsel
26 who are competent and experienced in class action litigation. There are no
27 material conflicts between the claims of the representative Plaintiff and the
28

1 Class members that would make class certification inappropriate. Counsel
2 for the Class will vigorously assert the claims of all Class members.

3 20. The persons who comprise the Class are so numerous that joining all of them is
4 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
5 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
6 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
7 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
8 Plaintiff are experienced, qualified and generally able to conduct complex class action
9 litigation.

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

- 12 (a) The questions of law and fact common to the Class predominate over any
13 question affecting only individual members;
- 14 (b) A class action is superior to any other available method for fairly and
15 efficiently adjudicating the claims of the Class;
- 16 (c) The Class members are so numerous that it is impractical to bring all of
17 them before the Court;
- 18 (d) Plaintiff and other Class members will not be able to obtain effective and
19 economic legal redress unless the action is maintained as a class action;
- 20 (e) There is a community of interest in obtaining appropriate legal and
21 equitable relief for the statutory violations, and in obtaining adequate
22 compensation for the damages and injuries for which Defendant is
23 responsible in an amount sufficient to adequately compensate the Class
24 members;
- 25 (f) Without Class certification, the prosecution of separate actions by
26 individual Class members would create a risk of:
- 27
28

1 i. Inconsistent or varying adjudications for individual Class members
2 that would establish incompatible standards of conduct for
3 Defendant; and/or,

4 ii. Adjudication for individual Class members that would, as a
5 practical matter, dispose of other non-party members' interests, or
6 that would substantially impair or impede the non-parties' ability
7 to protect their interests, by, for example, potentially exhausting
8 the funds available from Defendant, and

9 (g) Defendant has acted or refused to act on grounds generally applicable to
10 the Classes, making final injunctive relief appropriate for the Class, as a
11 whole.

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

17 18 **GENERAL ALLEGATIONS**

19 23. At all times material hereto, Defendant has been and is, a company that provides
20 mechanical and electrical services.

21 24. Plaintiff and members of the Class were employed as Commercial HVAC
22 Technicians by Defendant in California at various times during the Class Period.

23 **THE CONDUCT**

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

26 26. Starting on or about March 24, 2022 and continuing to June 2, 2022, Defendant
27 employed Plaintiff on an hourly basis as a Commercial HVAC Technician at Defendant's
28 business in Ontario, California.

1 27. While employed by Defendant as a Commercial HVAC Technician, Plaintiff
2 was paid \$29.00 per hour.

3 28. The employment by Defendant of the Class Members, and each them, is
4 governed by Industrial Welfare Commission Wage Order 4, which covers those persons
5 employed in Professional, Technical, Clerical, Mechanical, and Similar Occupations.

6 29. Under California law, non-exempt employees as defined by Wage Order 4, are
7 entitled to a 30-minute lunch period for each period more than 5 hours worked, a 10-minute
8 paid rest break for every four hours worked, or major fraction thereof. Non-exempt employees
9 are also entitled to one hour pay at their regular pay rate for each day the requisite rest and/or
10 meal periods are not provided.

11 30. Plaintiff and Class Members were not afforded meal breaks and/or meal breaks
12 were routinely interrupted. On days when Plaintiff and Class members worked between 10-12
13 hours, they were not afforded a second meal period. Plaintiff and Class Members were
14 routinely not afforded any rest breaks.

15 31. Here, Defendant required Plaintiff and the Class to use their personal cell
16 phones for work-related purposes both off-the-clock and on-the-clock. Plaintiff and Class
17 Members used their personal cell phones to contact suppliers and order parts, navigate routes
18 and communicate with their boss and co-workers.

19 32. Defendant unlawfully rounded down or “shaved” the hours worked by
20 employees such that they were not paid for all hours worked. Plaintiff and members of the
21 Class manually entered their shift’s start and end times and rounded their time in 15-minute
22 intervals. Further, the start and end times of meal breaks are not recorded.

23 33. As a result of Defendant’s failure to pay employees minimum wages due to
24 illegal rounding, the wage statements issued to the employees did not comply with *Labor Code*
25 §226 and California Industrial Welfare Commission (“IWC”) Wage Order 4 in that they did not
26 accurately reflect all wages earned and due and owing.

27 34. As a further result of Defendant’s failure to pay employees at required minimum
28 wages due to illegal rounding, when the employees left their employ, they were not timely paid

1 all wages due them, as required by *Labor Code* §§ 201, 202 and Wage Order 4. Further, it was
2 the practice of Defendant to not pay employees the final paychecks within the time periods
3 mandated by *Labor Code* §§201, 202 and Wage Order 4.

4 35. Defendant failed to reimburse Plaintiff and members of the Class for business-
5 related expenses, such as cell phones.

6 36. Defendant failed to pay Plaintiff and members of the Class for uniform
7 maintenance allowance.

8 37. Defendant violated Labor Code section 925 by requiring Plaintiff and Class
9 members to sign a non-disclosure agreement mandating arbitration in Chicago, Illinois.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES DUE TO TIME ROUNDING**

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

14 38. Plaintiff and the Class reallege and incorporate by reference all of the allegations
15 set forth in this Complaint.

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

21 40. *Labor Code* § 1197 states the California requirement that employees must be
22 paid at least the minimum wage fixed by the Commission, and any payment of less than the
23 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
24 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
25 the full amount of this minimum wage.” IWC Wage Order 4-2001 also obligates employers to
26 pay each employee minimum wages for all hours worked. These minimum wage standards
27 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
28 failure to pay for any particular hour of time worked by an employee is unlawful, even if

1 averaging an employee's total pay over all hours worked, paid or not, results in an average
2 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
3 (2005).

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

8 42. Furthermore, pursuant to *Labor Code* § 1198, "[t]he maximum hours of work
9 and the standard conditions of labor fixed by the commission shall be the maximum hours of
10 work and the standard conditions of labor for employees. The employment of any employee for
11 longer hours than those fixed by the order or under conditions of labor prohibited by the order
12 is unlawful."

13 43. Defendant failed to satisfy minimum wage requirements because Plaintiff and
14 Class members improperly rounded down by 15-minute intervals Plaintiff's hours to reflect a
15 lower number of hours resulting in failure to compensate Plaintiff properly for "all hours
16 worked" and consequently underpaid Plaintiff for the actual hours Plaintiff and Class members
17 worked in violation of *Labor Code* §§ 1197, 1198 and Wage Order 4.

18 44. Defendant, as a matter of established company policy and procedure,
19 consistently:

- 20 a. Administered a uniform company policy and practice as to the time rounding
21 policies regarding the members of the Class; and
22 b. Shaved the actual time worked and recorded by the members of the Class,
23 down by 15 minutes, so that during the course of their employment, the
24 members of the Class were paid less than they would have been paid had they
25 been paid for actual recorded time rather than "shaved" time.

26 45. Defendant's time rounding policies had a disproportionately negative impact on
27 Plaintiff and the members of the Class.
28

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

6 47. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
7 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
8 *Code* § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
9 for all hours worked under *Labor Code* § 1194, the employee may recover minimum wages for
10 the time associated with the overtime for which they received no compensation. *See Sillah v.*
11 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
12 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
13 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
14 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

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

19 49. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
20 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
21 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
22 proof.
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1 **THIRD CAUSE OF ACTION**

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

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

5 50. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 51. California Labor Code §226.7(a) prohibits an employer from requiring an
8 employee to work during any meal period mandated by an applicable Industrial Wage Order.
9 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
10 employee to work during a meal or rest break or recovery period mandated pursuant to an
11 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
12 Commission..."

13 52. California Labor Code §1198 makes unlawful the employment of an employee
14 under conditions the IWC prohibits.

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

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

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

24 An employer may not employ an employee for a work period of more than five
25 hours per day without providing the employee with a meal period of not less
26 than 30-minutes, except that if the total work period per day of the employee is
27 no more than six hours, the meal period may be waived by mutual consent of
28 both the employer and employee. An employer may not employ an employee
for a work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may

1 be waived by mutual consent of the employer and the employee only if the first
2 meal period was not waived.

3 56. The Labor Code and Wage Order provisions cited above require California
4 employers to provide employees with off-duty 30-minute meal periods on or before the end of
5 the fifth hour of their shifts. To satisfy this obligation, California employers must: (1) make
6 employees aware of their right to off-duty 30-minute meal periods before the end of the fifth
7 hour of their shifts, and (2) ensure that employees are actually free of job duties for thirty
8 minutes per day on or before the end of the fifth hour of their shifts.

9 57. As alleged herein, Defendant failed to relieve employees of duties for timely
10 meal breaks throughout the Class Period, Plaintiff and the members of the Class were routinely
11 required to work through their meal period at the fifth and sixth hour of their shifts at the
12 direction of Defendant and/or with their endorsement, encouragement, knowledge and
13 acquiescence. Meal breaks were routinely interrupted and Plaintiff and members of the Class
14 were not afforded a full 30-minute meal break. Further, Plaintiff and members of the Class
15 were not afforded a second meal break on days when they worked between 10-12 hours.

16 58. Under California law, employers must also record their employees' meal
17 periods: "Every employer shall keep accurate information with respect to each employee,
18 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
19 operations cease ... need not be recorded." IWC Order No. 5, § (7)(A)(3). Where the employer
20 has failed to keep records required by statute, the consequences of such failure should fall on
21 the employer, not the employee. In such a situation, imprecise evidence by the employee can
22 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
23 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
24 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
25 known its employees were regularly missing meal periods during the Class Period.

26 59. Here, when Plaintiff and Class members manually filled in their timesheets,
27 there was no space to record meal breaks.
28

60. Defendant has a policy or practice of failing to ensure that Plaintiff and members of the Class take the meal periods required by California Labor Code §226.7 and IWC Wage Order No. 4-2001 §11.

61. By their actions in not affording Plaintiff and Class members first meal periods and/or not affording them a second meal periods on days when Plaintiff and Class members worked in excess of 10 hours, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendant failed to provide employees with statutory timely off-duty meal periods.

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

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

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

FOURTH CAUSE OF ACTION

FOR FAILURE TO PROVIDE REST PERIODS

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

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

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

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

8 68. Defendant has intentionally and improperly denied rest periods to Plaintiff and
9 the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

10 69. At all times relevant hereto, Plaintiff and members of the Class have worked 8
11 or more hours daily.

12 70. At all times relevant hereto, Defendant failed to provide rest periods as required
13 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members never took
14 any rest breaks.

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

19
20 **FIFTH CAUSE OF ACTION**
21 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE**
22 **ACCURATE WAGE ITEMIZED STATEMENTS**

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

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

26 73. Pursuant to the applicable IWC Wage Orders, Defendant was the employer of
27 Plaintiff and the Class.

1 74. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 4-
2 2001 section 7, Defendant is required to maintain and provide accurate records relating to
3 employee compensation including all formulas and production records used to calculate wages
4 due.

5 75. Defendant is further required to provide, *inter alia*, semimonthly or at the time
6 of each payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2)
7 all deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which
8 the employee is being paid; (5) the name of the employee; and (6) the name and address of the
9 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

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

15 77. Notwithstanding these provisions. Defendant has engaged in a uniform practice
16 of refusing to maintain and provide the accurate records and wage statements required by
17 California law.

18 78. Throughout the Class Period, Defendant intentionally and knowingly provided
19 Plaintiff and other members of the Class with weekly itemized wage statements containing
20 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
21 that the payments owed to Plaintiff and the members of the Class for minimum wages due to
22 rounding, untimely or missed meal and rest periods, reimbursement for business expenses, and
23 reimbursement for uniform maintenance, were not included in the gross wages earned by
24 Plaintiff and members of the Class.

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

27 80. Plaintiff and members of the Class were damaged by these failures because,
28 among other things, the failures led them to believe that they were not entitled to minimum

1 wages, pay for meal and rest periods not provided, reimbursement for business expenses, and
2 uniform maintenance pay, even though they were so entitled and these failures hindered them
3 from determining the amounts of wages owed to them.

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

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

9
10 **SIXTH CAUSE OF ACTION**

11 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

12 **AND/OR RESIGNATION (Labor Code §§201-203 By Plaintiffs Against Defendant and**
13 **Does 1 through 100)**

14 83. Plaintiff and the Class reallege and incorporate by reference all of the allegations
15 set forth in this Complaint.

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

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

22 86. Plaintiff and the Class were discharged and/or resigned from Defendant's
23 employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

24 87. Plaintiff was not paid all monies that he was owed on the same date he was
25 terminated, June 2, 2022. Plaintiff's final pay was approximately one month late and did not
26 include waiting time penalties.

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

1 **SEVENTH CAUSE OF ACTION**

2 **REIMBURSEMENT OF BUSINESS EXPENSES**

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

4 89. Plaintiff and the Class reallege and incorporate by reference all of the allegations
5 set forth in this Complaint.

6 90. Labor Code §2802 requires employers to indemnify employees for all necessary
7 expenditures incurred by employees in the discharge of their duties.

8 91. At all times relevant herein, Defendant was aware that Plaintiff was using his
9 personal cell phone for business both on and off the clock, but failed to indemnify Plaintiff for
10 all his business-related expenses, including wear and tear expenses, in accordance with Labor
11 Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times,
12 Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their
13 work-related expenses that they incurred in using their cell phones for work-related purposes.

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

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

20
21 **EIGHTH CAUSE OF ACTION**

22 **FAILURE TO PAY FOR UNIFORM MAINTENANCE**

23 **(Labor Code §2802 By Plaintiffs against Defendant and Does 1 through 100)**

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

26 95. Under California law, if an employer requires non-exempt employees to wear a
27 uniform, the employer must pay for and maintain the uniform for the employee. Labor Code
28 §2802.

96. In addition to the cost of the uniform, the employer must provide non-exempt employees with reasonable maintenance of the uniforms. The employer can either maintain the uniform itself, or pay the employee a weekly maintenance allowance.

97. An employer may never impose a financial burden on employees, with respect to purchasing or maintaining clothing, which would reduce the employees' wage rate below the minimum wage.

98. Here, Defendant provided Plaintiff and members of the Class with uniforms. Although Defendant has a cleaning service, Plaintiff and members of the Class pay for the maintenance and cleaning themselves because the service does not return the uniforms in a timely manner. Plaintiff spent one hour per week cleaning and maintaining the uniform at a cost of \$2.25 per week.

99. Defendant failed to maintain the uniform, nor pay Plaintiff and members of the Class a weekly maintenance allowance.

100. As a proximate result of the aforementioned violations of § 2802, Plaintiff and members of the Class are entitled to recovery from Defendant for reimbursement of necessary expenditures including interest and attorneys' fees.

101. As a proximate result of the aforementioned violations of Labor Code § 2802, Plaintiff and members of the Class have been damaged in an amount according to proof at the time of trial.

NINTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §925

(Labor Code §925 By Plaintiffs against Defendant and Does 1 through 100)

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

103. Under Labor Code section 925(a), “[a]n employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following: (1) Require the employee to adjudicate outside

1 of California a claim arising in California. (2) Deprive the employee of the substantive
2 protection of California law with respect to a controversy arising in California. [...].”

3 104. Upon information and belief, Defendant required Plaintiff and members of the
4 Class, as a condition of employment, to sign agreements that include a foreign forum-selection
5 which compels them to adjudicate claims-arising in California-outside of California, in
6 violation of Labor Code section 925(a).

7 105. Plaintiff and members of the Class were required by Defendant to execute non-
8 disclosure agreements that require them to submit to the exclusive jurisdiction of the State of
9 Illinois and to resolve employment-related disputes via arbitration in Chicago, Illinois. Such
10 agreements are voidable by Plaintiff and members of the Class pursuant to Labor Code section
11 925.

12 106. Plaintiff and the Class are seeking injunctive relief for Defendant’s violation of
13 Labor Code section 925(a) to render void, Defendant’s agreements that include a foreign
14 forum-selection provision in violation of Labor Code section 925.

15 107. Plaintiff and the Class are seeking any other remedy available for Defendant’s
16 violation of Labor Code section 925(a), including voiding the non-disclosure agreements.

17 108. Plaintiff and the Class are also seeking reasonable attorneys’ fees under Labor
18 Code section 925(c), California Code of Civil Procedure section 1021.5, or any other
19 applicable law allowing for such.

20
21 **TENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
24 **through 100)**

25 109. Plaintiff and the Class reallege and incorporate by reference all of the allegations
26 set forth in this Complaint.

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

4 111. The Business & Professions Code defines unfair competition as any unlawful,
5 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
6 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
7 minimum wages due to rounding; (2) pay Plaintiff and the Class meal periods not provided, (3)
8 pay Plaintiff and the Class rest periods not provided, (4) furnish Plaintiff and the Class with
9 accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial
10 Welfare Commission requirements, (5) pay Plaintiff and the Class wages due when leaving
11 their employ, (6) reimburse business expenses, (7) pay for uniform maintenance, and (8)
12 remedies for violation of Labor Code section 925, all in violation of Business & Professions
13 Code §§ 17200 *et seq.*

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

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

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

27 115. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
28 above-described business practices are unfair and unlawful and that injunctive relief should be

1 issued restraining Defendant from engaging in any of the above described unfair and unlawful
2 business practices in the future.

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

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

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

14 2. For payment of unpaid wages in accordance with California labor and
15 employment law;

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

18 4. For compensatory damages in the amount of Plaintiff and Class Members' cell
19 phone expenses for business purposes, costs and attorneys' fees pursuant to Cal. Code Civ.
20 Proc. §2802(c);

21 5. For compensatory damages in the amount of Plaintiff and Class Members'
22 uniform maintenance expenses, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
23 §2802(c);

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

26 7. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

27 8. For payment to Plaintiff and Class Members of waiting time penalties pursuant
28 to *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of

1 termination or layoff, multiplied by the total amount of days elapsed between the date of the
2 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
3 maximum of 30 days' pay, according to proof;

4 9. For specific relief enforcing waiting time penalties of 30 days of per diem wages
5 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

6 10. For prejudgment interest accrued on all due and unpaid overtime and minimum
7 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
8 1194(a), according to proof;

9 11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 1198.5,
10 according to proof;

11 12. For reasonable costs, including attorneys' fees, in an amount according to proof
12 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 1198.5(1), 218.5, 2802, 925(c) and/or *Cal.*
13 *Code of Civ. Proc.* §1021.5;

14 13. For an award of restitution of wages to Plaintiff and Class Members in an
15 amount equal to the amount of wages owed and unpaid, according to proof;

16 14. For injunctive relief requiring Defendant to comply with Labor Code §925;

17 15. For injunctive relief ordering the continuing unfair business acts and practices to
18 cease, as the Court deems just and proper;

19 16. For other injunctive relief ordering Defendant to notify Plaintiff and Class
20 Members that they have not been paid the proper amounts in accordance with California law;

21 17. For punitive and exemplary damages in a sum to be determined at trial; and

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

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DEMAND FOR JURY TRIAL

Plaintiff Dennis Laurence Tetzloff hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: March 30, 2023

By: /s/ *Thomas H. Schelly*
Thomas H. Schelly
Attorneys for Plaintiff
Dennis Laurence Tetzloff