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on behalf of himself and current and former aggrieved employees

**ELECTRONICALLY FILED**  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

MICHAEL ANTHONY FITCH on behalf of  
himself and current and former aggrieved  
employees

Plaintiff,

vs.

LOT MANAGEMENT; RED COW, INC.; and  
DOES 1 to 100, inclusive,

Defendants.

Case No.: 37-2023-00034751-CU-OE-CTL

**PAGA ACTION**

**PLAINTIFF MICHAEL ANTHONY  
FITCH'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT  
TO THE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004  
("PAGA"), LABOR CODE  
SECTIONS 2698, ET SEQ.**

**COMES NOW** Plaintiff MICHAEL ANTHONY FITCH ("Plaintiff"), who alleges and  
complains against Defendants LOT MANAGEMENT; RED COW, INC and DOES 1 to 100,  
inclusive (collectively "Defendants") as follows:

**I. INTRODUCTION**

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*  
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself  
and other current and former aggrieved employees of Defendants who worked as hourly non-  
exempt employees in California during the relevant time period seeking civil penalties associated

1 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all  
2 hours worked at the employees' minimum wage rate and/or overtime rate, failure to indemnify  
3 employees for employment-related expenditures, failure to provide all legally required and legally  
4 compliant meal periods, failure to timely pay earned wages during employment, failure to provide  
5 complete and accurate wage statements, failure to timely pay all unpaid wages following  
6 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor  
7 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor  
8 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and  
9 others aggrieved.

## 10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and  
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks  
13 civil penalties on behalf of himself, all other current and former aggrieved California-based hourly  
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars  
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-  
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former  
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout  
18 California, including but not limited to San Diego County, at 9455 Ridge Haven, San Diego, CA  
19 92123.

20 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted  
21 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any  
22 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are  
23 tolled from April 6, 2020, until October 1, 2020.

## 24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce  
26 Development Agency on behalf of himself and other current and former employees subject to  
27 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is  
28 filed include current, former and/or future employees of Defendants who work, worked, or will

1 work for Defendants as direct employees as well as temporary employees employed through temp  
2 agencies as hourly non-exempt employees in California. At all times mentioned herein, the  
3 currently named Plaintiff is and was domiciled and a resident and citizen of California and was  
4 employed by Defendants in an hourly position at Defendants' location in San Diego from  
5 approximately March 2022, until on or about April 21, 2023.

6 5. Plaintiff is informed and believes and thereon alleges that Defendant LOT  
7 MANAGEMENT is authorized to do business within the State of California and is doing business  
8 in the State of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto  
9 were persons acting on behalf of Defendant LOT MANAGEMENT in the establishment of, or  
10 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant LOT  
11 MANAGEMENT operates in San Diego County and employed Plaintiff and aggrieved employees  
12 in San Diego County, including but not limited to, at 9455 Ridge Haven, San Diego, CA 92123.

13 6. Plaintiff is informed and believes and thereon alleges that Defendant RED COW,  
14 INC. is authorized to do business within the State of California and is doing business in the State  
15 of California and/or that Defendants DOES 26-50 are, and at all times relevant hereto were  
16 persons acting on behalf of Defendant RED COW, INC. in the establishment of, or ratification of,  
17 the aforementioned illegal wage and hour practices or policies. Defendant RED COW, INC.  
18 operates in San Diego County and employed Plaintiff and aggrieved employees in San Diego  
19 County, including but not limited to, at 9455 Ridge Haven, San Diego, CA 92123.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1  
21 through 50 are corporations, or are other business entities or organizations of a nature unknown to  
22 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted  
23 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and  
24 working conditions of employment of Plaintiff and aggrieved employees.

25 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51  
26 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued  
27 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,  
28 supervisor, independent contractor and/or employee of each defendant who violated or caused to

1 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of  
2 the Industrial Welfare Commission's wage orders regulating hours and days of work.

3 9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff  
4 sues said defendants by said fictitious names, and will amend this complaint when the true names  
5 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as  
6 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously  
7 named defendants is in some manner responsible for the events and allegations set forth in this  
8 complaint.

9 10. Plaintiff makes the allegations in this complaint without any admission that, as to  
10 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and  
11 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

12 **FIRST CAUSE OF ACTION**

13 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**  
14 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

15 **(Against all Defendants by Plaintiff)**

16 11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

17 12. During Plaintiff's employment and continuing through the present, Plaintiff alleges  
18 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197,  
19 1198, 2802, and the applicable Wage Orders.

20 13. Specifically, Defendants have committed the following violations of California  
21 Labor Code:

22 14. **Failure to pay wages for all hours worked at the legal minimum wage:**  
23 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt  
24 employees. In California, an employer is required to pay hourly employees for all "hours worked,"  
25 which includes all time that an employee is under control of the employer and all time the  
26 employee is suffered and permitted to work. This includes the time an employee spends, either  
27 directly or indirectly, performing services which inure to the benefit of the employer.

28 15. Labor Code sections 1194 and 1197 require an employer to compensate employees

1 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the  
2 Wage Orders.

3 16. In this case, Plaintiff and other current and former aggrieved California-based  
4 hourly non-exempt employees worked more minutes per shift than Defendants credited them with  
5 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former  
6 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum  
7 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but  
8 not limited to:

9 a) “Rounding down” or “shaving down” Plaintiff and other current and former  
10 aggrieved California-based hourly non-exempt employees daily hours worked at the time of their  
11 clock-ins and clock-outs, including clock-ins and clock-outs for meal breaks, to the nearest quarter  
12 of an hour, to the benefit of Defendants; and

13 b) Automatically deducting 30 minutes from Plaintiff and other current and former  
14 aggrieved California-based hourly non-exempt employees daily hours worked and attributing that  
15 time to a meal break despite that Defendants routinely failed to provide Plaintiff and other current  
16 and former aggrieved California-based hourly non-exempt employees meal breaks and/or duty-  
17 free meal breaks.

18 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current  
19 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’  
20 control without paying wages for that time. This resulted in Plaintiff and other current and former  
21 aggrieved California-based hourly non-exempt employees working time for which they were not  
22 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable  
23 Wage Order.

24 18. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**  
25 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt  
26 employees. In California, an employer is required to pay hourly employees for all “hours worked,”  
27 which includes all time that an employee is under control of the employer and all time the  
28 employee is suffered and permitted to work. This includes the time an employee spends, either  
directly or indirectly, performing services that inure to the benefit of the employer.’

19 19. Labor Code sections 510 and 1194 require an employer to compensate employees a  
20 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty

1 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

2 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)  
3 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of  
4 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-  
5 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve  
6 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular  
7 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any  
8 seventh day of a workweek shall be compensated at the rate of no less than twice the  
9 regular rate of pay of an employee.

10 Labor Code section 510.

11 20. In this case, Defendants failed to pay Plaintiff and other current and former  
12 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours  
13 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

14 a) "Rounding down" or "shaving down" Plaintiff and other current and former  
15 aggrieved California-based hourly non-exempt employees daily hours worked at the time of their  
16 clock-ins and clock-outs, including clock-ins and clock-outs for meal breaks, to the nearest quarter  
17 of an hour, to the benefit of Defendants; and

18 b) Automatically deducting 30 minutes from Employee and other current and former  
19 aggrieved California-based hourly non-exempt employees daily hours worked and attributing that  
20 time to a meal break despite that Defendants routinely failed to provide Plaintiff and other current  
21 and former aggrieved California-based hourly non-exempt employees meal breaks and/or duty-  
22 free meal breaks.

23 21. The foregoing policies, practices, and/or procedures resulted in time during each  
24 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt  
25 employees were under the control of Defendants but were not compensated. To the extent that the  
26 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved  
27 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,  
28 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed  
to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code  
sections 510 and 1194 and the applicable Wage Order.

22. Therefore, Defendants require Plaintiff and all other current and former aggrieved  
California-based hourly non-exempt employees to report for work and be put to work for less than  
half of their usual or scheduled day's work, but Defendants did not pay Plaintiff or all other current

1 and former aggrieved California-based hourly non-exempt employees any reporting time pay.

2       23. Defendants' practice resulted in Plaintiff and all other current and former aggrieved  
3 California-based hourly non-exempt employees not receiving reporting time pay when required to  
4 work less than their half their usual schedule or scheduled day's work in compliance with  
5 California law.

6       24. **Failure to pay wages to hourly non-exempt employees for workdays that**  
7 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other  
8 current and former aggrieved California-based hourly non-exempt employees regularly worked  
9 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

10       25. California law requires an employer to authorize or permit an employee an  
11 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of  
12 all duties and the employer relinquishes control over the employee's activities prior to the  
13 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 5 at §11; *Brinker*  
14 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an  
15 employee for a work period of more than ten (10) hours per day without providing the employee  
16 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh  
17 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period  
18 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal  
19 period is only permitted when: (1) the nature of the work prevents an employee from being  
20 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

21       26. If an employer fails to provide an employee a meal period in accordance with the  
22 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay  
23 for each workday that a legally required and compliant meal period was not provided. Labor Code  
24 section 226.7; Wage Order 5 at §11.

25       27. In this case, Defendants failed to authorize or permit legally required and compliant  
26 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-  
27 exempt employees due to Defendants' policies, practices, and/or procedures, including but not  
28 limited to:

1 a) Automatically deducting 30 minutes from Plaintiff and other current and former  
2 aggrieved California-based hourly non-exempt employees daily hours worked and attributing that  
3 time to a meal break despite that Defendants routinely failed to provide Plaintiff and other current  
and former aggrieved California-based hourly non-exempt employees meal breaks and/or duty-  
free meal breaks.

4 28. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or  
5 procedure of failing to compensate Plaintiff and other current and former aggrieved California-  
6 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each  
7 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt  
8 employees did not receive legally required and compliant meal periods, in violation of Labor Code  
9 section 226.7.

10 29. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff  
11 and other current and former aggrieved California-based hourly non-exempt employees not  
12 receiving wages to compensate them for workdays during which Defendants did not provide them  
13 with meal periods in compliance with California law.

14 30. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**  
15 **Employment:** California law requires that every employer must indemnify its employees for all  
16 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at  
17 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing  
18 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §  
19 2802.)

20 31. Defendants have violated Labor Code Section 2802 by failing to indemnify  
21 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'  
22 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants  
23 employed a policy, practice, and procedure requiring Plaintiff and other current and former  
24 aggrieved California-based hourly non-exempt employees to use or purchase their own tools  
25 and/or resources in order to work for Defendants, including but not limited to their personal cell  
26 phone to download and maintain application to clock-in and clock-out for shift - without  
27 reimbursing Plaintiff and other current and former aggrieved California-based hourly non-exempt  
28 employees for such use.

1           32.     Moreover, Defendants employed policies and procedures which ensured Plaintiff  
2 and aggrieved employees would not receive indemnification for their employment related  
3 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such  
4 indemnification in compliance with California law.

5           33.     Therefore, Defendants are liable to Plaintiff and aggrieved employees for their  
6 employment related expenses, including but not limited to costs related to use of their personal  
7 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

8           34.     **Failure to timely pay earned wages during employment:** In California, wages  
9 must be paid at least twice during each calendar month on days designated in advance by the  
10 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages  
11 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the  
12 16th and the 26th day of that month and wages earned between the 16th and the last day,  
13 inclusive, of any calendar month must be paid between the 1st and 10th day of the following  
14 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be  
15 paid within seven (7) calendar days following the close of the payroll period in which wages were  
16 earned. Labor Code section 204(d).

17           35.     As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed  
18 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-  
19 exempt employees' earned wages (including minimum wages, overtime wages, meal period  
20 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,  
21 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former  
22 aggrieved California-based hourly non-exempt employees' their earned wages within the  
23 applicable time frames outlined in Labor Code section 204.

24           36.     **Failure to provide complete and accurate wage statements:** Labor Code section  
25 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an  
26 employee his or her wages, the employer must "furnish each of his or her employees ... an  
27 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the  
28 employee, except for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of  
2 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable  
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all  
4 deductions made on written orders of the employee may be aggregated and shown as one item, (5)  
5 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the  
6 name of the employee and his or her social security number, (8) the name and address of the legal  
7 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and  
8 the corresponding number of hours worked at each hourly rate by the employee.”

9       37. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff  
10 and other current and former aggrieved California-based hourly non-exempt employees all wages  
11 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered  
12 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’  
13 wage statements inaccurate, in violation of Labor Code section 226.

14       38. **Failure to pay employees all wages due at time of termination/resignation:** An  
15 employer is required to pay all unpaid wages timely after an employee’s employment ends. The  
16 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)  
17 hours of resignation (Labor Code section 202).

18       39. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay  
19 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees  
20 all their earned wages (including minimum wages, overtime wages, and/or meal period premium  
21 wages,), Defendants failed to pay those employees timely after each employee’s termination  
22 and/or resignation, in violation of Labor Code sections 201, 202, and 203.

23       40. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved  
24 employee, on behalf of himself or herself and other current or former employees, to bring a civil  
25 action to recover civil penalties against all Defendants pursuant to the procedures specified in  
26 Labor Code section 2699.3.

27       41. Plaintiff has complied with the procedures for bringing suit specified in Labor  
28 Code section 2699.3. On June 1, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and

1 provided notice to Defendants by certified mail which provided notice of the specific provisions of  
2 the Labor Code alleged to have been violated, including the facts and theories to support the  
3 violations alleged.

4 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by  
5 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code  
6 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the  
7 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends  
8 to investigate Plaintiff's claims.

9 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil  
10 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,  
11 512, 1194, 1197, and 2802, During Plaintiff's employment and continuing through the present,  
12 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the  
13 following amounts:

14 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and  
15 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial  
16 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each  
17 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

18 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)  
19 for each employee for each pay period for the initial violation, and for each subsequent violation,  
20 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts  
21 established by Labor Code section 226.3].

22 c. For violations of Labor Code section 510, fifty dollars (\$50) for each  
23 employee for each pay period for the initial violation, and for each subsequent violation, one  
24 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts  
25 established by Labor Code section 558].

26 d. For violations of Labor Code section 1194 and 1197, one hundred dollars  
27 (\$100) for each underpaid employee for each pay period for the initial violation, and for each  
28 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay

period [penalty amounts established by Labor Code section 1197.1].

44. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with his claims for civil penalties.

**PRAYER FOR RELIEF**

**WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

**ON THE FIRST CAUSE OF ACTION:**

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: August 14, 2023

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

By:

  
\_\_\_\_\_  
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