

Tuvia Korobkin, Esq. # 268066
tuvia@abramsonlabor.com
Rijenea Appling, Esq. # 346329
rijenea@abramsonlabor.com
ABRAMSON LABOR GROUP
11846 Ventura Boulevard, Suite 100
Studio City, California 91604
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

BERNARDO VARGAS BARCENAS, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

ADVANTAGE MANAGEMENT, INC., a
California corporation; and DOES 1 through
100, Inclusive,

Defendants.

Case No. 30-2023-01334908-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- (2) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- (3) FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198)**
- (4) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*).**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Bernardo Vargas Barcenas (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this Class and Representative Action Complaint against
3 Advantage Management, Inc., a California corporation; and Does 1 through 100, inclusive
4 (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7, 510, 512, 516, 558, 1194,
9 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission Wage Order No. 4 (“Wage
10 Order 4”), in addition to seeking declaratory relief and restitution. This class action is brought
11 pursuant to Code of Civil Procedure section 382. This Court has jurisdiction over Defendants’
12 violations of the Labor Code because the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in Orange County. Defendants own, maintain offices, transact business, have an agent
18 or agents within Orange County, and/or otherwise are found within Orange County, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq.*; California Business &
28 Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 4, which sets

1 employment standards for employees in the professional, technical, clerical, mechanical, and
2 similar occupations.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of this action and continuing to the present, Defendants did (and do)
5 business by providing property management services within California, and that they employed
6 Plaintiff and other similarly situated non-exempt employees within Orange County and the state
7 of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 Members (as defined in Paragraph 17).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee from approximately November 2021 until approximately January 2023.

10. During Plaintiff's employment with Defendants, Defendants failed to provide Plaintiff and other non-exempt employees with all statutorily mandated meal periods due to Defendants' meal period policies/practices. Specifically, Defendants encouraged Plaintiff and other non-exempt employees to take short meal periods by placing pressure on Plaintiff and other non-exempt employees to return from their meal periods as soon as possible. This practice made it impracticable for Plaintiff and other non-exempt employees to take a full 30-minute off-duty meal period prior to the end of the fifth hour of work. Indeed, Plaintiff's time records reflect many meal periods that are less than 30 minutes. For example, on September 8, 2022, Plaintiff's time record reflects a meal period of just 24 minutes, from 12:21 p.m. to 12:45 p.m. As another example, on November 22, 2022, Plaintiff's time record reflects a meal period beginning at 12:04 p.m. and ending at 12:32 p.m. for a total of just 28 minutes. In addition, Defendants failed to provide a second 30-minute meal period on shifts over 10.0 hours. For example, Plaintiff's time records reflect that Plaintiff worked a total of 12.53 hours on March 23, 2022 with no second meal period – a shift for which a second meal period cannot be waived. In those instances that Defendants failed to provide Plaintiff and other non-exempt employees a legally compliant meal period, Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon information and belief, Defendants maintained no payroll code or mechanism to pay meal period premiums to Plaintiff or other employees on those occasions when legally compliant meal periods were not provided.

11. Defendants have also failed to authorize and permit rest periods to Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and permit a 10-minute net rest period for every 4 hours worked or major fraction thereof, as Plaintiff and other non-exempt employees were frequently unable to take the rest periods to which they were entitled as a result of the workload imposed by Defendants. In those instances that Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a legally compliant rest

1 period, Defendants failed to pay the premium wages required by Labor Code § 226.7. On
2 information and belief, Defendants maintained no payroll code or other mechanism for paying
3 premium wages when Defendants failed to authorize and permit legally compliant rest periods.

4 12. Defendants also failed to reimburse Plaintiff and other employees for expenses
5 incurred in the course of their employment, including expenses incurred in using personal cell
6 phones and/or personal vehicles for work purposes. Specifically, Defendants required Plaintiff
7 and other employees to use their personal cell phones to download and use a cell phone
8 application called “SDP Support” to clock in and out of their shifts. Defendants also frequently
9 called Plaintiff on his personal cell phone for work related communications. Despite requiring
10 Plaintiff to use his personal cellular phone for work-related purposes, Defendants failed to
11 reimburse Plaintiff for any portion of his personal cellular phone bill, in violation of Labor Code
12 § 2802 and *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

13 13. In addition, Defendants required Plaintiff and other employees to use their
14 personal vehicles to drive between job sites. For example, Plaintiff was on occasion required to
15 drive to a job site in La Habra, California for work and then subsequently required to drive from
16 the La Habra job site to another job site in Santa Ana, California. Although Defendants required
17 Plaintiff to use his personal vehicle for work, Defendants failed to reimburse or indemnify
18 Plaintiff for the expenses he incurred in driving his personal vehicle for work purposes.

19 14. Defendants also failed to pay overtime wages at 1.5 times Plaintiff’s and other
20 employees’ “regular rate” of pay. Specifically, Defendants failed to incorporate bonuses and/or
21 other forms of pay that are not excludable from the “regular rate” (hereinafter these forms of pay
22 will be collectively referred to herein as “Incentive Pay”) when calculating overtime. For
23 example, in September 2022 Defendants paid Plaintiff bonus of \$500.00 but failed to incorporate
24 that bonus into Plaintiff’s “regular rate,” and paid Plaintiff’s overtime in the corresponding pay
25 period at 1.5 times his *base* rate of pay rather than 1.5 time his “regular rate” of pay.

26 15. As a result of Defendants’ failure to pay all meal and rest period premium wages
27 and all overtime wages, Defendants maintained inaccurate payroll records, and issued inaccurate
28 wage statements to Plaintiff and other non-exempt employees.

1 16. As a further result of Defendants' failure to pay all meal and rest period premium
2 wages and overtime wages, Defendants failed to pay all wages to Plaintiff and other formerly
3 employed non-exempt employees at the separation of their employment.

4 **CLASS ACTION ALLEGATIONS**

5 17. Class Definitions: Plaintiff bring this action on behalf of himself and the following
6 Classes pursuant to Section 382 of the Code of Civil Procedure:

7 a. The Meal Period Class consists of all of Defendants' current and former non-
8 exempt employees in California who worked at least one shift in excess of 5.0 hours and/or
9 at least one shift in excess of 10.0 hours, at any time from four years immediately preceding
10 the filing of this action through the present.

11 b. The Rest Period Class consists of all of Defendants' current and former non-
12 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
13 time from four years immediately preceding the filing of this action through the present.

14 c. The Overtime Class consists of all of Defendants' non-exempt employees in
15 California who worked over 8.0 hours in a workday and/or over 40.0 hours in a workweek,
16 and earned Incentive Pay in a corresponding pay period, at any time from four years
17 immediately preceding the filing of this action through the present.

18 d. The Expense Reimbursement Class consists of all of Defendants' employees in
19 California who used their personal cellular phones and/or personal vehicles for work
20 purposes, at any time from four years immediately prior to the filing of this action through
21 the present.

22 e. The Wage Statement Class consists of all members of the Meal Period Class, Rest
23 Period Class, and/or Overtime Class who received a wage statement at any time from one
24 year immediately preceding the filing of this lawsuit through the present.

25 f. The Waiting Time Class consists of all members of the Meal Period Class, Rest
26 Period Class, and/or Overtime Class who are no longer employed by Defendants and whose
27 employment with Defendants ended at any time from three years immediately preceding
28 the filing of this lawsuit through the present.

1 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
4 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
5 Defendants' employment records.

6 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
7 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
8 situated employees, which predominate over questions affecting only individual members
9 including, without limitation to:

- 10 i. Whether Defendants provided legally compliant meal periods to members
11 of the Meal Period Class;
- 12 ii. Whether Defendants authorized and permitted legally compliant rest
13 periods to members of the Rest Period Class;
- 14 iii. Whether Defendants properly paid overtime wages to members of the
15 Overtime Class;
- 16 iv. Whether Defendants properly reimbursed expenses incurred by members
17 of the Expense Reimbursement Class;
- 18 v. Whether Defendants furnished legally compliant wage statements to
19 members of the Wage Statement Class pursuant to Labor Code § 226; and
- 20 vi. Whether Defendants paid all wages due to members of the Waiting Time
21 Class at the time of separation of employment.

22 20. **Predominance of Common Questions:** Common questions of law and fact
23 predominate over questions that affect only individual Class members. The common questions
24 set forth above are numerous and substantial and stem from Defendants' policies and/or practices
25 applicable to each individual class member, such as Defendants' wage statement, meal period,
26 rest period, overtime, expense reimbursement, and final wage policies/practices. Thus, common
27 questions predominate over individual questions concerning each individual Class member's
28 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

1 21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
4 alleged herein, Plaintiff, like the members of the Classes, was deprived of earned wages, was
5 subject to Defendants' unlawful meal and rest period policies/practices, was furnished with
6 inaccurate wage statements, was deprived of all final wages upon his separation of employment
7 from Defendants, and was not reimbursed for all expenses he incurred in carrying out his job
8 duties for Defendants.

9 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
10 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
11 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
12 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
13 actions in state and federal courts in the past and are committed to vigorously prosecuting this
14 action on behalf of the members of the Classes.

15 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
16 an important public interest in establishing minimum working conditions and standards in
17 California. These laws and labor standards protect the average working employee from
18 exploitation by employers who have the responsibility to follow the laws and who may seek to
19 take advantage of superior economic and bargaining power in setting onerous terms and
20 conditions of employment. The nature of this action and the format of laws available to Plaintiff
21 and members of the Classes make the class action format a particularly efficient and appropriate
22 procedure to redress the violations alleged herein. If each employee were required to file an
23 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
24 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
25 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
26 an individual remedy would discourage the assertion of lawful claims by employees who would
27 be disinclined to file an action against their former and/or current employer for real and justifiable
28 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the

1 prosecution of separate actions by individual class members would create a substantial risk of
2 inconsistent or varying verdicts or adjudications with respect to the individual class members
3 against Defendants herein; and which would establish potentially incompatible standards of
4 conduct for Defendants. Further, the claims of the individual members of the Classes are not
5 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
6 costs and expenses attending thereto. As such, the Classes identified in Paragraph 17 are
7 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

8 **FIRST CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 24. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

12 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 failed in their affirmative obligation to provide all their hourly non-exempt employees, including
14 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
15 the mandates of the California Labor Code (including Labor Code § 512) and Wage Order 4, for
16 the reasons set forth in this Complaint.

17 26. As a result, Defendants owe premium compensation for meal period violations,
18 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 4, Labor
19 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

20 **SECOND CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 28. Labor Code §§ 226.7 and 516, and Wage Order 4, § 12 establish the right of
25 employees to be authorized and permitted a rest period of at least ten (10) minutes for each four
26 (4) hour period worked, or major fraction thereof.

27 29. As alleged herein, Defendants failed to authorize and permit Plaintiff and Rest
28 Period Class members to take their legally entitled rest periods. Defendants also failed to

1 compensate Plaintiff and Rest Period Class members with a rest period premium for each rest
2 period to which they were entitled while working.

3 30. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
4 Period Class members in a civil action for the unpaid amount of rest period premiums owing,
5 including interest thereon, statutory penalties, civil penalties, and costs of suit according to
6 Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art.
7 XV, § 1 of the California Constitution.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES**

10 **(AGAINST ALL DEFENDANTS)**

11 31. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 32. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
13 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
14 overtime hours worked, and which provide a private right of action for the failure to pay all
15 overtime compensation for overtime work performed.

16 33. At all times relevant herein, Defendants were required to properly compensate
17 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
18 Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an
19 employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess
20 of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours
21 on the seventh consecutive workday in a workweek. Wage Order 4, § 3 also requires an employer
22 to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a
23 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.
24 As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime
25 hours but did not compensate them at one and one-half times (or two times) their regular rate of
26 pay for such hours.

27 34. The foregoing policies and practices are unlawful and create entitlement to
28 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime

1 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
2 suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of
3 Civil Procedure § 1021.5.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **(AGAINST ALL DEFENDANTS)**

7 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 36. At all times, Defendants were subject to Labor Code § 2802, which states that "an
9 employer shall indemnify his or her employees for all necessary expenditures or losses incurred
10 by the employee in direct consequence of the discharge of his or her duties, or of his or her
11 obedience to the directions of the employer."

12 37. At all times, Defendants were subject to Labor Code § 2804, which states, "any
13 contract or agreement, express or implied, made by any employee to waive the benefits of this
14 article or any part thereof, is null and void, and this article shall not deprive any employee or his
15 personal representative of any right or remedy to which he is entitled under the laws of this State."

16 38. Due to Defendants' unlawful policy and practice of requiring employees to use
17 their personal property, including but not limited to their personal cell phones and/or personal
18 vehicles, for work purposes, and their failure to reimburse Plaintiff and members of the Expense
19 Reimbursement Class, Defendants have violated Labor Code § 2802.

20 39. As a proximate result of Defendants' policies and/or practices in violation of Labor
21 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered
22 damages in sums, which will be shown according to proof.

23 40. Plaintiff and members of the Expense Reimbursement Class are entitled to
24 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

25 41. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
26 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
27 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
28 accrue from the date on which they incurred the initial necessary expenditure.

1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and the Wage Statement Class with accurate and complete itemized wage statements that
8 included, among other requirements, all overtime wages and all meal and rest period premium
9 wages earned, in violation of Labor Code § 226.

10 44. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
11 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
12 among other things, the non-payment of all their overtime wages and meal and rest period
13 premium wages, and deprived them of the information necessary to identify the discrepancies in
14 Defendants' reported data.

15 45. Defendants' failures create an entitlement to recovery by Plaintiff and members of
16 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
17 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
18 of suit, pursuant to Labor Code §§ 226 and 226.3.

19 **SIXTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

22 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
24 an employer to pay all wages immediately at the time of separation of employment in the event
25 the employer discharges the employee, or the employee provides at least 72 hours of notice of
26 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
27 to quit, said employee's wages become due and payable not later than 72 hours upon said
28 employee's last date of employment.

48. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime wages and unpaid meal and rest period premium wages.

49. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

50. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

52. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages due, failing to provide meal periods, failure to authorize and permit rest periods, failing to furnish accurate itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

53. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

1 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
2 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
3 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
4 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

5 55. The acts complained of herein occurred within the four years immediately
6 preceding the filing of this action.

7 56. Plaintiff was compelled to retain the services of counsel to file this court action to
8 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
9 of Defendants' current non-exempt employees, and to enforce important rights affecting the
10 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
11 which he is entitled to recover under Code of Civil Procedure § 1021.5.

12 **EIGHTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST ALL DEFENDANTS)**

15 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 58. Defendants have committed several Labor Code violations against Plaintiff and
17 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
18 Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings
19 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
20 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
21 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
22 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
23 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
24 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
25 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
26 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
27 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and
28 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay

period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 516, 558, and 1198;
- c. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- d. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198.
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation of Labor Code §§ 226 and 1198; and
- f. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203.

59. On or about July 3, 2023, Plaintiff notified Defendant Advantage Management, Inc., via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified above. Now that sixty-five days have passed from Plaintiff's initially notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act.

///

60. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;
11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699,

including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

12. Prejudgment interest on all due and unpaid wages and other damages pursuant to California Labor Code §§ 218.6 and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

14. For such other and further relief the Court may deem just and proper.

Date: July 3, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By:


Tuvia Korobkin
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: July 3, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By:


Tuvia Korobkin
Attorneys for Plaintiff