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individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
[UNLIMITED CIVIL]

HUGO VAZQUEZ, an individual, and as a
proxy for the State of California,

Plaintiff,

vs.

THE J.N. LEWIS GROUP, INC, a corporation;
PALM SPRINGS SUNRISE PALMS
HOMEOWNERS ASSOCIATION, a
corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: CVPS2304090

*Assigned for All Purposes to the Honorable
Kira L. Klatchko in Dept. PS1*

FIRST AMENDED COMPLAINT FOR:

- 1. Private Attorneys General Act**
- 2. Failure to Pay Overtime Wages in Violation of Labor Code § 510**
- 3. Violation of Unfair Competition Law**
- 4. Labor Code § 203 Waiting Time Penalty**
- 5. Failure to Reimburse and Indemnify for Expenditures**
- 6. Failure to Provide Accurate Itemized Wage Statements**

DEMAND FOR JURY TRIAL

Plaintiff, HUGO VAZQUEZ, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Riverside.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

4. Defendant THE J.N. LEWIS GROUP, INC (“LEWIS GROUP”) is a corporation that conducted, and is conducting, business in the State of California. LEWIS GROUP registered the address 42427 Rancho Mirage Lane, Rancho Mirage, CA 92270 with the California Secretary of State as its principal place of business in California.

5. Defendant PALM SPRINGS SUNRISE PALMS HOMEOWNERS ASSOCIATION (“SUNRISE PALMS”) is a corporation that conducted, and is conducting, business in the State of California. SUNRISE PALMS registered the address 42427 Rancho Mirage Lane, Rancho Mirage, CA 92270 with the California Secretary of State as its principal place of business in California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s injuries were proximately caused by the conduct of such defendant.

7. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each other, in that each agreed to participate, and participated in, the furtherance of the objective of civil wrongs as alleged in this Complaint.

8. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

9. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-

Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

12. Defendants employed Plaintiff, as a salary worker, from at least around March 14, 2014, to June 9, 2023. LEWIS GROUP was Plaintiff and aggrieved employees' employer. SUNRISE PALMS exercised sufficient control over Plaintiff and aggrieved employees' wages, hours, and working conditions, and suffered and permitted them to work, that it was their joint-employer. As a company-wide practice, Defendants regularly required Plaintiff and its other non-exempt employees to work over eight hours per day, or 40 per week, without overtime compensation. As a company-wide practice, Defendants regularly required Plaintiff and its other non-exempt employees to use their personal vehicles for work purposes and did not pay them for mileage. As a result of not paying overtime wages, Defendants also failed to pay Plaintiff and its other non-exempt employees all of their owed final wages upon discharge.

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FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS AND DOES 1-5)

13. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

14. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Cal. Lab. Code § 2699(f).

15. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

20. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Cal. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Cal. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

1 16. This PAGA action is intended to “remediate present violations and deter future ones.”
 2 *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of
 3 action is from August 26, 2022, to present and ongoing.

4 ***Labor Code Violations §§ 510, 226, 204, 1198, 2802, 1174(d), 558, 210, 226.3, 1174.5, 201, 202,***
 5 ***203***
 6 ***§ 510***

7 17. “Any work in excess of eight hours in one workday and any work in excess of 40 hours
 8 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
 9 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
 10 employee.” Lab. Code § 510(a).

11 18. Plaintiff and his co-workers regularly worked more than eight hours per workday. They
 12 were not compensated with premium overtime pay for those overtime hours worked more than eight per
 13 day. As such, Defendants violated Labor Code § 510.

14 19. California Labor Code section 510 does not provide for its own self-contained “civil
 15 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
 16 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
 17 aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing
 18 allegations for this notice is from one year preceding this letter, to present and ongoing.

19 ***§ 226***

20 20. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his
 21 or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages,
 22 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing
 23 showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
 24 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
 25 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
 26 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
 27 which the employee is paid, (7) the name of the employee and only the last four digits of his or her social
 28 security number or an employee identification number other than a social security number, (8) the name

and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a).

21. Due to Defendants’ failure to account for all the time worked, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1) the accurate total hours worked; (2) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such, Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendants also failed to keep itemized wage statement records of the foregoing.

22. Labor Code Section 226 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 204

23. Labor Code Section 204(a) provides that “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

24. Plaintiff and his co-workers regularly worked more than eight hours per workday. They were not compensated with the earned premium overtime pay for those overtime hours worked more than eight per day. As such, Defendants violated Labor Code Section 204(a) by failing to pay for all the overtime premium wages on regular paydays. Labor Code Section 204 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

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Labor Code § 1198

25. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. California Labor Code section 1173 defines commission as the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

26. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period. As set forth above, Plaintiff and her co-workers occasionally worked more than eight hours per workday. They were not compensated with the earned premium overtime pay for those overtime hours worked more than eight per day. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4- 2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which in so far as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

27. As set forth above, on numerous occasions, Defendants did not permit Plaintiff and other aggrieved employees to overtime wages for work over eight hours per day or forty per week.

28. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

29. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

30. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

31. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 2802

32. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

33. *Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144–45 (2014), *review denied* (Nov. 25, 2014).

34. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*,

1 to show liability under section 2802, an employee need only show that he was required or directed to use
2 a personal equipment to do work-related activities and was not reimbursed.

3 35. Defendants did not reimburse or pay Plaintiff or the other aggrieved employees for any
4 portion of their mileage, in violation of Labor Code § 2802(a).

5 36. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code
6 § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved
7 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
8 employee per pay period for each subsequent violation. The relevant period of the foregoing allegations
9 for this notice is from one year preceding this letter, to present and ongoing.

10 **§ 1174(d)**

11 37. Labor Code Section 1174(d) provides that every person employing labor in this state
12 shall keep payroll records showing the hours worked daily by and the wages paid to employees
13 employed for not less than three years. "Person" means any person, association, organization,
14 partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

15 38. Defendants failed to maintain records showing the actual and accurate hours worked by
16 Plaintiff and Plaintiff's co-workers, aggrieved employees, in violation of Labor Code Section 1174(d).
17 Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute.
18 Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved
19 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
20 for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one
21 year preceding this letter, to present and ongoing.

22 **§ 558**

23 39. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of
24 an employer who violates, or causes to be violated, [Labor Code sections 510 and 512] or any provision
25 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to
26 a civil penalty in a PAGA action as follows:

27 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
28 for which the employee was underpaid . . .

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .

40. As discussed above, Defendants violated Labor Code section 510 and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 226.3

41. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount” set forth in Labor Code section 226.3 for failing to provide the employee a wage deduction statement or failing “to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). “[A] representative PAGA claim for civil penalties for a violation of section 226(a) **does not require proof of injury or a knowing and intentional violation**. This is true even though these two elements are required to be proven when bringing an individual claim for damages or statutory penalties under section 226(e).” *Raines*, at 670 (emphasis added). Because Defendants violated California Labor Code section 226(a), Defendants is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 1174.5

42. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendants violated Labor Code Labor Code Section 1174(d). Defendants willfully failed to maintain records showing the accurate hours worked daily by the aggrieved employees. Thus, Defendants are subject to civil penalties. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

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1 **§ 201-203**

2 43. Due to the overtime and break violations, Plaintiff did not timely receive all of his final
3 pay within the required timeframe from his discharge date. Defendants also failed to provide Plaintiff his
4 final pay on the date of discharge. Thus, Defendants violated Labor Code sections 201-203. Defendants
5 also did this to other aggrieved employees. Labor Code Sections 201-203 do not provide for their own
6 self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a
7 civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
8 each aggrieved employee per pay period for each subsequent violation. The relevant period of the
9 foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

10 ***Exhaustion of Administrative Remedies***

11 44. On August 31, 2023, Plaintiff provided notice to the California Labor and Workforce
12 Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of
13 the foregoing Labor Code sections that have been violated, including the facts and theories to support
14 the violations. The LWDA file number is LWDA-CM-978892-23. The notice was sent by certified mail
15 on or about August 22, 2023, to James N. Lewis, CEO, The J.N. Lewis Group, Inc. (9214 8902 3589
16 0900 0023 0690 56) and Robert Tickell, CEO, Palm Springs Sunrise Palms Homeowners Association
17 (9214 8902 3589 0900 0023 0691 31). Plaintiff submitted a fee waiver to the LWDA.

18 45. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code,
19 sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s
20 administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil
21 action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to
22 the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor
23 Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to
24 Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to
25 Labor Code section 2699.

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SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

46. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

47. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Cal. Lab. Code § 1194(a).

48. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Cal. Lab. Code § 510(a).

49. Plaintiff worked more than eight hours per workday and more than 40 hours per workweek and, except for a few times, was not compensated at an overtime rate for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

50. Any "person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation." Cal. Lab. Code § 558.1(a).

51. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has

worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendant, in accordance with California law.

52. Plaintiff has been damaged in an amount equal to the compensation to which Plaintiff was entitled but was unlawfully deprived by Defendant, subject to proof at trial.

53. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendant.

54. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys' fees, and costs.

THIRD CAUSE OF ACTION

VIOLATION OF UNFAIR COMPETITION LAW

(AGAINST ALL DEFENDANTS AND DOES 1-5)

55. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

56. Defendant's conduct, as alleged in this Complaint, has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's competitors. Defendant's activities as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California's Unfair Competition Law ("UCL") Business and Professions Code Section 17200 et seq.

57. A violation of Business and Professions Code Section 17200 et seq. may be predicated on the violation of any state or federal law including violations of the Labor Code. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000). Business and Professions Code Section 17200 et seq. defines unfair competition to include any unlawful, unfair or fraudulent business act or practice.

58. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Cal. Lab. Code § 510(a).

59. During Plaintiff's employment, Plaintiff sometimes worked more than eight hours per workday and more than 40 hours per workweek, as alleged above, and was not compensated for those

1 overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor
2 Code section 510.

3 60. Defendant regularly required Plaintiff to work without being provided the opportunity to
4 have an uninterrupted rest break. Defendant regularly did not allow Plaintiff the opportunity to be
5 relieved of Plaintiff's duties to take a rest break. Defendant did not compensate Plaintiff in lieu of
6 providing Plaintiff with rest breaks. Defendant regularly required Plaintiff to work more than 5 hours
7 without being provided with a duty-free meal period with relief of all duties. Defendant did not
8 compensate Plaintiff in lieu of providing Plaintiff with meal breaks. In doing so, Defendant violated
9 Labor Code sections 226.7 and 512.

10 61. As a result of the herein described violations of law, Defendant unlawfully gained an
11 unfair advantage over other businesses. As a result of the herein described violations of law, Defendant
12 has unjustly enriched itself at the expense of Plaintiff and the general public. Such conduct by
13 Defendant constitutes unfair competition and unfair business practices, as such terms are described in
14 Business and Professions Code section 17200, et seq.

15 62. Plaintiff is informed, believe and thereon allege that Defendant has continued and still
16 threaten to, unless restrained and ordered to disgorge all profits derived from said unfair business
17 practices as restitution to Plaintiff, violate the Unfair Competition Law by engaging in business practices
18 violative of California law as detailed hereinabove.

19 63. Plaintiff and others have been personally injured and continue to be injured by
20 Defendant's unlawful business acts and practices as alleged herein, including, but not limited to, the loss
21 of money and/or property at a sum according to proof at trial.

22 64. Pursuant to Business and Professions Code § 17203, the court is authorized to make such
23 orders or judgments as may be necessary to prevent the use or employment by any such person or entity
24 of any such practice which constitutes unfair competition or as may be necessary to restore to any
25 person in interest any money or property which may have been acquired by means of such unfair
26 competition.

65. Pursuant to Business and Professions Code Section 17200 et seq., Plaintiff is entitled to restitution of the wages and other monies wrongfully withheld and retained by Defendant, for the period commencing from four years preceding the filing of the Complaint.

66. “Unless otherwise expressly provided, the remedies or penalties provided by [Business and Professions Code Section 17200 et seq.] are cumulative to each other and to the remedies or penalties available under all other laws of [California].”

FOURTH CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTY (AGAINST ALL DEFENDANTS AND DOES 1-5)

67. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

68. Defendant willfully failed to timely pay Plaintiff all of Plaintiff’s owed wages on Plaintiff’s last date of work, in violation of Cal. Labor Code § 201, and failed to pay Plaintiff the additional continuing wages as a penalty from the original due date, in violation of California Labor Code § 203.

69. Plaintiff has been harmed by Defendant’s conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and costs.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES (AGAINST ALL DEFENDANTS AND DOES 1-5)

70. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

71. California Labor Code § 2802(a) provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

72. California Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

73. Defendant violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a).

74. Plaintiff has been damaged by Defendant's failure to pay or reimburse work expenses in an amount according to proof at trial.

75. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

76. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Cal. Lab. Code § 558.1(a).

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

77. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

78. California Labor Code section 226(a) provides that every employer shall, at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing accurate: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9)

all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. . .” A copy of the itemized statement shall be kept on file by the employer for at least three years. Cal. Lab. Code § 226(a). A “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by Labor Code Section 226(a). Cal. Lab. Code § 226(a).

79. Defendant knowingly and intentionally failed to provide an itemized statement in writing showing *accurate* information required by Labor Code section 226(a).

80. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Cal. Lab. Code § 226(e)(1).

81. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing the *accurate* gross wages earned and total hours worked, and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or total hours worked. Cal. Lab. Code § 226(e)(2)(B)(i).

82. As a result of the knowing and intentional failure to provide compliant wage statements, Plaintiff has suffered an injury pursuant to section 226(e). Defendant is liable to Plaintiff for the amounts provided by California Labor Code § 226(e).

83. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

84. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Cal. Lab. Code § 558.1(a).

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PRAYER

WHEREFORE, Plaintiff prays:

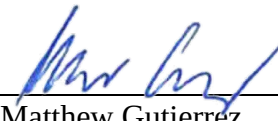
1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory special damages, in an amount according to proof at the time of trial.
3. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
4. For restitution, in an amount according to proof at the time of trial.
5. For statutory penalties pursuant to the California Labor Code.
6. For injunctive relief in the form of an order enjoining the Defendant from continuing violations of the Labor Code.
7. For reasonable attorneys' fees pursuant to the California Labor Code.
8. For costs of suit including expert witness fees.
9. For prejudgment interest.
10. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff HUGO VAZQUEZ hereby demands a trial by jury.

Dated: October 30, 2023

GUTIERREZ DERHAM LAW FIRM LLP

By: 

Matthew Gutierrez
Attorneys for Plaintiff, HUGO VAZQUEZ,
individually and as a proxy for the State of
California