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on behalf of himself and others similarly situated

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

DAVID LORD LINDSAY, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

COOLISH HOLDINGS, LLC formerly known
as WILDFLOUR BAKERY & CAFE LLC, a
California limited liability company; KANAN
BAKING COMPANY, an entity of unknown
form; and DOES 1 through 50, inclusive,

Defendants.

FILED
Superior Court of California
County of Los Angeles

10/25/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

Case No. 23STCV20038
Assigned for All Purposes To:
Hon. William F. Highberger
Dept.: 10

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll Records Under Labor Code §§ 1174, and 1174.5;
9. Failure to Produce Requested Employment Records Under Labor Code §§ 226 and 1198.5;
10. Penalties Pursuant to Labor Code § 203; and
11. Violation of Business & Professions Code § 17200 et seq.
12. Penalties Pursuant to Labor Code § 2699, et seq

DEMAND FOR JURY TRIAL

1 Plaintiff DAVID LORD LINDSAY, (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants COOLISH
8 HOLDINGS, LLC formerly known as WILDFLOUR BAKERY & CAFE LLC, a California
9 limited liability company, KANAN BAKING COMPANY, an entity of unknown, and DOES 1
10 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges
11 that Defendants, and each of them, violated various provisions of the California Labor Code,
12 relevant orders of the Industrial Welfare Commission (IWC) and California Business &
13 Professions Code, and seeks redress therefore.

14 2. Plaintiff alleges that Defendants, and each of them routinely acquire consumer
15 reports to conduct background checks on Plaintiff and other prospective, current and former
16 employees and use information from consumer reports in connection with their hiring process
17 without providing proper disclosures and obtaining proper authorization in compliance with the
18 law.

19 3. Plaintiff is a resident of California and during the time period relevant to this
20 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
21 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
22 worked for Defendants in Los Angeles County, and in other nonexempt positions, throughout
23 California and, and consistently worked at Defendants’ behest without being paid all wages due.
24 More specifically, Plaintiff and the other similarly situated Class members were employed by
25 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
26 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
27 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
28 subjected to the same policies and practices, and (3) endured similar violations at the hands of

1 Defendants as the other Employee Class members who served in similar and related positions.

2 4. Defendants required Plaintiff and the Employees in the Class to perform work
3 while remaining under Defendants' control during their meal breaks. Defendants thus failed to pay
4 Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage
5 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.
6 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as
7 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
8 meal and rest periods as required by the Labor Code.

9 THE PARTIES

10 A. The Plaintiff

11 5. Plaintiff DAVID LORD LINDSAY has resided in California and during the time
12 period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee
13 within the State of California.

14 B. The Defendants

15 6. Defendant COOLISH HOLDINGS, LLC formerly known as WILDFLOUR
16 BAKERY & CAFE LLC, ("CH") is a California limited liability company with its principle
17 executive offices in Woodland Hills, California, and has been listed as the employer on
18 the wage statements issued to Plaintiff during the relevant time period. CH lists an address in
19 Woodland Hills, California with the California Secretary of State, and employs Plaintiff and the
20 Employees in Los Angeles County, including at Defendants' offices and facilities in Woodland
21 Hills, California, and throughout California and Defendants conduct business throughout
22 California.

23 7. Defendant KANAN BAKING COMPANY is an entity of unknown form with its
24 principle executive office in Los Angeles, California, and has been listed as the employer on
25 Plaintiff's personnel file during the relevant time period. KANAN BAKING COMPANY does not
26 list a California address with the California Secretary of State, but upon information and belief,
27 employs Plaintiff and the Class Members in Los Angeles County, including at Defendants' offices
28 and facilities in Woodland Hills, California, and throughout California and conducts business

throughout California.

8. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in Los Angeles County and Defendants maintain and operate company offices and facilities in Los Angeles County, and employ Plaintiff and other Class members in Los Angeles County and throughout California.

1 **FACTUAL BACKGROUND**

2 11. The Employees who comprise the Class and Collective, including Plaintiff, are
3 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
4 Employees who work in nonexempt positions at the direction of Defendants in the State of
5 California. Plaintiff and the Class members were either not paid by Defendants for all hours
6 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
7 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
8 without compensation by going through temperatures checks prior to entering the job site, waiting
9 in line to use the time clock, before clocking in and continuing work by cleaning, attending
10 mandatory meetings, and conducting food safety tests after clocking out and time spent working
11 while clocked out for meal breaks. Plaintiff also contends that Defendants failed to pay Plaintiff
12 and the Class members all wages due and owing, failed to provide meal and rest breaks, and failed
13 to furnish accurate wage statements, all in violation of various provisions of the California Labor
14 Code and applicable Wage Orders.

15 12. During the course of Plaintiff and the Class members’ employment with
16 Defendants, they were not paid all wages they were owed, including for all work performed and
17 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
18 labor budgets low.

19 13. As a matter of uniform Company policy, Plaintiff and the Class members were
20 required to work during their meal and rest breaks which were not compensated by Defendants in
21 violation of the California Labor Code. Plaintiff and the Class members were also not paid
22 regular wages and overtime for the time they were required to comply with other requirements
23 imposed upon them, which they had to complete while working through their meal and rest
24 breaks and without compensation. As a result Plaintiff and the Class members worked shifts over
25 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
26 appropriate overtime rate for all such hours, including by being required to perform work duties
27 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
28 worked substantial overtime hours during their employment with Defendants for which they were

1 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

2 14. As a result of the above described the daily work demands and pressures to work
3 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
4 Class members were not properly paid for all wages earned and for all wages owed to them by
5 Defendants, including when working more than eight (8) hours in any given day and/or more than
6 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
7 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
8 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
9 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
10 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
11 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
12 Labor Code, applicable IWC Wage Orders.

13 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
14 continuing to the present, Defendants had a consistent policy or practice of failing to pay
15 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
16 by California Law.

17 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants had a consistent policy or practice of failing to pay
19 Employees overtime compensation at premium overtime rates for all hours worked in excess of
20 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
21 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
22 sections of IWC Wage Orders.

23 17. From at least four (4) years prior to the filing of this lawsuit and continuing to the
24 present, Defendants failed to pay Plaintiff and Employees all earned and accrued vacation pay.

25 18. Additionally from at least four (4) years prior to the filing of this lawsuit and
26 continuing to the present, Defendants have regularly required Employees to work shifts in excess
27 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
28 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal

1 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
2 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
3 Defendants failed to provide or deficiently provided.

4 19. From at least four (4) years prior to the filing of this lawsuit and continuing to the
5 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
6 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
7 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
8 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
9 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

10 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
11 continuing to the present, Defendants have consistently failed to provide Employees with timely,
12 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

13 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
14 continuing to the present, Defendants have consistently failed to provide Employees with timely,
15 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

16 22. From at least four (4) years prior to the filing of this lawsuit and continuing to the
17 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
18 performance of their job duties for Defendants including, but not limited to, cell phone usage
19 which were necessary to perform their duties under Defendants’ employ in violation of Labor
20 Code § 2802.

21 23. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
22 continuing to the present, Defendants have consistently failed to keep accurate time and wage
23 records as required by California wage-and-hour laws.

24 24. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
25 to the present, Defendants have had a consistent policy of denying Employees the right to inspect
26 and receive all of their payroll records, timecards, and personnel records.

27 25. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
28 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to

1 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as
2 required by California wage-and-hour laws.

3 26. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
4 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5,
5 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

6 27. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
7 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
8 enjoyed from their violations of Labor Code.

9 CLASS ALLEGATIONS

10 28. Plaintiff brings this class action on behalf of himself and all others similarly situated
11 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows:
12 all individuals employed by Defendants, at any time within four (4) years of the filing of this
13 lawsuit, and have been employed by Defendants within the State of California.

14 29. Further, plaintiff seeks to represent the following Subclasses composed of and
15 defined as follows:

16 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
17 compensated for all hours worked for Defendants at the applicable minimum wage.

18 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
19 compensated for all hours worked for Defendants at the required rates of pay, including for all
20 hours worked in excess of eight in a day and/or forty in a week.

21 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
22 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
23 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

24 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
25 Defendants' policy and/or practice of failing to authorize and permit Employees to take
26 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
27 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

28 e. Subclass 5. Payroll Records Subclass. All Class members who were subject to

Defendants' policy and/or practice of failing to keep accurate time and wage records as required by California wage-and-hour laws.

f. Subclass 6. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

g. Subclass 7. Vacation Wages Subclass. All Class members who were not compensated at the Employee's regular rate of pay for their vacation wages.

h. Subclass 8. Failure to Reimburse for Necessary Business Expenditures Subclass. All Class members who were subject to Defendants failing to reimburse for expenses necessarily incurred in the performance of Employees job duties for Defendants which were necessary to perform their duties under Defendants' employ.

i. Subclass 9. Termination Pay Subclass. All Class members who, within the applicable limitations period, either voluntarily or involuntarily separated from their employment and were subject to Defendants' policy and/or practice of failing to timely pay wages upon termination.

j. Subclass 10. Failure To Produce Requested Employment Records Subclass. All Class members who, within the applicable limitations period, were denied the right to inspect and receive all of their payroll records, timecards, and personnel records.

k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a result of Defendants' business acts and practices, to the extent such acts and practices are found to be unlawful, deceptive, and/or unfair.

30. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class description with greater particularity or further division into subclasses or limitation to particular issues.

31. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure § 382 because there is a well-defined community of interest in litigation and proposed class is easily ascertainable.

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1 **A. Numerosity**

2 32. The potential members of the class as defined are so numerous that joinder of all
3 the member of the class is impracticable. While the precise number of class member has not been
4 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
5 time period relevant to this lawsuit, employed more than 100 individuals were employed by
6 Defendant's within the State of California.

7 33. Accounting for employee turnover during the relevant time period increases this
8 number substantially. Plaintiff alleges that Defendants' employment records will provide
9 information as to the number and location of all class members.

10 **B. Commonality**

11 34. There are questions of law and fact common to the class that predominate over any
12 questions affecting only individual class members. These common questions of law and fact
13 include:

- 14 a. Whether Defendants failed to pay Employees minimum wages;
15 b. Whether Defendants failed to pay Employees wages for all hours worked;
16 c. Whether Defendants failed to pay Employees overtime as required under Labor
17 Code § 510;
18 d. Whether Defendants failed to pay Employees vacation wages as required under
19 Labor Code § 227.3;
20 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
21 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
22 premium pay in lieu thereof;
23 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
24 Orders, by failing to provide Employees with requisite rest breaks or premium pay
25 in lieu thereof;
26 f. Whether Defendants violated Labor Code § 226(a);
27 h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
28 i. Whether Defendants failed to reimburse Employees for necessary business

1 expenses;

2 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
3 wages and compensation due and owing at the time of termination of employment;

4 k. Whether Defendants violated Labor Code §§ 226 and 1198;

5 l. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq*;

6 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

7 n. Whether Employees are entitled to equitable relief pursuant to Business and
8 Professions Code § 17200 *et seq.*

9 **C. Typicality**

10 35. The claims of the named plaintiff are typical of those of the other Employees.

11 Employees all sustained injuries and damages arising out of and caused by Defendant's common
12 course of conducts in violation of statutes, as well as regulations that have the force and effect of
13 law, as alleged herein.

14 **D. Adequacy of Representation**

15 36. Plaintiff will fairly and adequately represent and protect the interest of Employees.

16 Counsel who represents Employees are experienced and competent in litigating employment class
17 actions.

18 **E. Superiority of Class Action**

19 37. A class action is superior to other available means for the fair and efficient

20 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
21 questions of law and fact common to all Employees predominate over any questions affecting only
22 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
23 Defendants' illegal policies or practices of failing to compensate Employees properly.

24 38. Class action treatment will allow those persons similarly situated to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.

26 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

39. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

40. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks, worked “pre-shift” and “post-shift” without compensation by going through temperatures checks prior to entering the job site, waiting in line to use the time clock, before clocking in and continuing work by cleaning, attending mandatory meetings, and conducting food safety tests after clocking out. Additionally, Defendants had a consistent policy of failing to pay Employees for hours worked during alleged meal periods for which Employees were consistently denied, as also addressed herein. Moreover, Defendants did not pay Plaintiff and Employees at the applicable minimum wage for all hours worked. Defendants’ uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

41. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

42. The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are therefore entitled to double the minimum wage during the relevant period.

43. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

1 Notwithstanding any agreement to work for a lesser wage, any
2 employee receiving less than the legal minimum wage or the legal
3 overtime compensation applicable to the employee is entitled to
4 recover in a civil action the unpaid balance of the full amount of
5 this minimum wage or overtime compensation, including interest
6 thereon, reasonable attorney's fees and costs of suit.

7 44. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
8 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

9 45. California Labor Code § 1194.2 also provides for the following remedies:

10 In any action under Section 1194 . . . to recover wages because of
11 the payment of a wage less than the minimum wages fixed by an
12 order of the commission, an employee shall be entitled to recover
13 liquidated damages in an amount equal to the wages unlawfully
14 unpaid and interest thereon.

15 46. Defendants have the ability to pay minimum wages for all time worked and have
16 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
17 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

18 47. Wherefore, Employees are entitled to recover the unpaid minimum wages
19 (including double minimum wages), liquidated damages in an amount equal to the minimum
20 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
21 to California Labor Code § 1194(a).

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

24 **(Against All Defendants)**

25 48. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 49. By their conduct, as set forth herein, Defendants violated California Labor Code §
28 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
(a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight

(8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees wages for all hours worked including time off the clock working “pre-shift” and “post-shift” without compensation by going through temperatures checks prior to entering the job site, waiting in line to use the time clock, before clocking in and continuing work by cleaning, attending mandatory meetings, and conducting food safety tests after clocking out and the uncompensated time included the time Employees worked off-the-clock during meal periods. Employees regularly worked over 8 hours on a given day without receiving overtime compensation.

50. Defendants’ failure to pay compensation in a timely fashion also constituted a violation of California Labor Code § 204, which requires that all wages shall be paid semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct violation of that provision of the California Labor Code, Defendants have failed to pay all wages and overtime compensation earned by Employees. Each such failure to make a timely payment of compensation to Employees constitutes a separate violation of California Labor Code § 204.

51. Employees have been damaged by these violations of California Labor Code §§ 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

52. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys’ fees and costs.

THIRD CAUSE OF ACTION

MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

53. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

54. Employees regularly worked shifts greater than five (5) hours and greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of more than five (5) hours without providing him or her with a meal period of not less than thirty

1 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
2 meal period of not less than thirty (30) minutes.

3 55. Defendants failed to provide Employees with meal periods as required under the
4 Labor Code. Employees were consistently required to work through their meal periods which they
5 were consistently denied. Employees were also required to take meal periods after working well
6 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
7 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
8 period as required by law.

9 56. Moreover, Defendants failed to compensate Employees for each meal period not
10 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
11 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
12 employee a meal period in accordance with this section, the employer shall pay the employee one
13 hour of pay at the employee's regular rate of compensation for each workday that the meal period
14 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
15 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
16 and 20 of the applicable IWC Wage Order.

17 57. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
18 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
19 period not provided or deficiently provided, a sum to be proven at trial.

20 **FOURTH CAUSE OF ACTION**

21 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

22 **(Against All Defendants)**

23 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 59. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
26 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
27 not less than ten (10) minutes for each consecutive four (4) hour shift.

28 60. Defendants failed to provide Employees with timely rest breaks of not less than ten

1 (10) minutes for each consecutive four (4) hour shift.

2 61. Moreover, Defendants failed to compensate Employees for each rest period not
3 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
4 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
5 accordance with this section, the employer shall pay the employee one hour of pay at the
6 employee's regular rate of compensation for each workday that the rest period is not provided.
7 Defendants failed to compensate the Employees in the Class for each rest period not provided or
8 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
9 Order.

10 62. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
11 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
12 worked without the required rest breaks, a sum to be proven at trial.

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO PAY VACATION WAGES**
15 **(Against All Defendants)**

16 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 64. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
19 employment policy provides for paid vacation and an employee is terminated without having
20 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
21 in accordance with said contract of employment or policy respecting eligibility or time served.

22 65. Defendants failed to pay Plaintiff and Aggrieved Employees all earned and accrued
23 vacation pay.

24 66. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
25 to Labor Code § 227.3.

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1 **SIXTH CAUSE OF ACTION**
2 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
3 **IN VIOLATION OF LABOR CODE § 2802**
4 **(Against All Defendants)**

5 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 68. Under Labor Code § 2802(a) an employer must indemnify its employees for all
8 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
9 of his or her duties, or of his or her obedience to the directions of the employer.

10 69. Employees incurred necessary expenditures in the performance of their job duties
11 for Defendants, cell phone usage which were necessary to perform their duties under Defendants'
12 employ. From four (4) years prior to the original filing of this lawsuit and continuing to the
13 present, Defendants consistently failed to reimburse Employees for these necessarily incurred
14 business expenses.

15 70. As a result of the unlawful acts of Defendants, Employees have been deprived of
16 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
17 plus interest and penalties thereon, attorneys' fees, and costs.

18 **SEVENTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 226(a)**
20 **(Against All Defendants)**

21 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

23 72. California Labor Code § 226(a) requires an employer to furnish each of his or her
24 employees with an accurate, itemized statement in writing showing the gross and net earnings,
25 total hours worked, and the corresponding number of hours worked at each hourly rate; these
26 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
27 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
28 statements may be given to the employee separately from the payment of wages; in either case the

1 employer must give the employee these statements twice a month or each time wages are paid.

2 73. Defendants failed to provide Employees with accurate itemized wage statements in
3 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
4 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
5 periods and rest breaks, all of which Defendants knew or reasonably should have known were
6 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were
7 confusing and required Employees to engage in discovery and refer to outside sources to verify
8 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

9 74. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
10 Employees suffered injuries, including among other things confusion over whether they received
11 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
12 forcing them to make mathematical computations to analyze whether the wages paid in fact
13 compensated them correctly for all hours worked.

14 75. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
15 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
16 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
17 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
18 award of costs and reasonable attorneys' fees.

19 76. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
20 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
21 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
22 employee for each pay period.

23 77. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
24 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
25 shown according to proof.

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EIGHTH CAUSE OF ACTION
FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174
and 1174.5
(Against All Defendants)

78. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

79. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that any employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

80. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiff and Employees as required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages, overtime, and premium pay as discussed above.

81. Defendants are also required by the California Labor Code § 1198 and the applicable Wage Order to maintain a tracking system that accurately records the times at which Employees works.

82. Defendants have maintained a common unlawful policy and practice of failing to accurately record meal breaks. At all times relevant hereto, Defendants had maintained an unlawful uniform policy and practice of editing the time records entered by its Employees to change the actual meal break times recorded by the employee, in order to make it appear as though Defendants' Employees took timely and compliant meal breaks.

83. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them.

84. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code including §§ 1174.5. for the three (3) years prior to the filing of this Complaint.

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NINTH CAUSE OF ACTION
FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR
CODE §§ 226 and 1198
(Against All Defendants)

85. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

86. Pursuant to California Labor Code § 226, current and former employees have the right to inspect or receive a copy of their records pertaining to their employment, upon reasonable request to their employer. Under this statute, an employer that receives a request to inspect or receive a copy of records pertaining to a current or former employee must comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request..

87. Pursuant to California Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under this statute, upon written request from a current or former employee or his or her representative, an employer must make the contents of those personnel records available for inspection or provide a copy of the personnel records to the current or former employee, or his or her representative, not later than thirty (30) calendar days from the date the employer receives the written request, subject to some limited exceptions. Failure to comply with these requests allows for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and 226(f).

88. Plaintiff sent written requests through his counsel to Defendants for their payroll records, timecards, and personnel records. However, Plaintiff has not received all of his requested records as of the date of this Complaint

89. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely produce the required records requested by Plaintiff.

90. On information and belief, Defendants' failure to provide Plaintiff with all of his

1 requested employment records is not an isolated incident, but was instead consistent with
2 Defendants' policy and practice that applied to Plaintiff and Employees.

3 91. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
4 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

5 92. Pursuant to California Labor Code § 226, Plaintiff is entitled to a penalty of seven
6 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

7 **TENTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 203**
9 **(Against All Defendants)**

10 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 94. Numerous Employees are no longer employed by Defendants; they either quit
13 Defendants' employ or were fired therefrom.

14 95. Defendants failed to pay these Employees all wages due and certain at the time of
15 termination or within seventy-two (72) hours of resignation.

16 96. The wages withheld from these Employees by Defendants remained due and owing
17 for more than thirty (30) days from the date of separation of employment.

18 97. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
19 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
20 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
21 to thirty (30) days from the date they were due.

22 **ELEVENTH CAUSE OF ACTION**
23 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**
24 **(Against All Defendants)**

25 98. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 99. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
28 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in

1 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
2 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of Code of Civil Procedure
4 § 1021.5.

5 100. Plaintiff is a “person” within the meaning of Business & Professions Code
6 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
7 relief, restitution, and other appropriate equitable relief.

8 101. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair
9 business practices.

10 102. Wage-and-hour laws express fundamental public policies. Paying employees their
11 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
12 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
13 to enforce minimum labor standards, to ensure that employees are not required or permitted to
14 work under substandard and unlawful conditions, and to protect law-abiding employers and their
15 employees from competitors who lower costs to themselves by failing to comply with minimum
16 labor standards.

17 103. Defendants have violated statutes and public policies. Through the conduct alleged
18 in this Complaint Defendants have acted contrary to these public policies, have violated specific
19 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
20 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff,
21 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
22 guaranteed to all employees under the law.

23 104. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in
24 violation of the Business & Professions Code § 17200 et seq.

25 105. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
26 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
27 care should have known that their conduct was unlawful; therefore their conduct violates the
28 Business & Professions Code § 17200 et seq.

106. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial.

107. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

TWELFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.
(Against All Defendants)

108. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

109. Plaintiff and Employees are aggrieved employees as defined under Labor Code §2699(c) in that they suffered the violations alleged in this Complaint and were employed by the alleged violators, Defendants.

110. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants’ violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.

111. The penalties shall be allocated as follows: 75% to the Labor and Workforce Development Agency (LWDA) and 25% to the affected employee.

112. Employees also seek any and all penalties and remedies set forth in Labor Code § 558, which states:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty

as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations of civil penalties issued by the Labor Commissioner for violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by the law.

113. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

114. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on August 21, 2023. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letters.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to

1 the filing of this action, as may be proven;

2 3. For liquidated damages in the amount equal to the unpaid minimum wage and
3 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;

4 4. For compensatory damages in the amount of the hourly wage made by Employees
5 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
6 years prior to the filing of this action, as may be proven;

7 5. For compensatory damages in the amount of the hourly wage made by Employees
8 for each day requisite rest breaks were not provided or were deficiently provided where no
9 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
10 be proven;

11 6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

12 7. For penalties pursuant to Labor Code § 226.3, as may be proven;

13 8. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

14 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
15 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

16 10. For penalties pursuant to Labor Code § 227.3, as may be proven;

17 11. For penalties pursuant to Labor Code § 1174.5, as may be proven;

18 12. For penalties pursuant to Labor Code §§ 226 and 1198.5, as may be proven;

19 13. For restitution for unfair competition pursuant to Business & Professions Code
20 § 17200 et seq., including disgorgement or profits, as may be proven;

21 14. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

22 15. For compensatory damages in the amount of all previously unreimbursed business
23 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
24 from four (4) years prior to the original filing of this action, as may be proven;

25 16. For an order enjoining Defendants and their agents, servants, and employees, and
26 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
27 duties adumbrated in this Complaint;

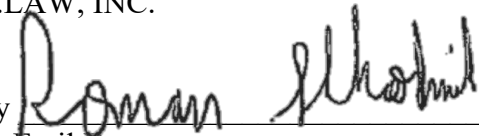
28 17. For all general, special, and incidental damages as may be proven;

- 1 18. For an award of pre-judgment and post-judgment interest;
2 19. For an award providing for the payment of the costs of this suit;
3 20. For an award of attorneys' fees; and
4 21. For such other and further relief as this Court may deem proper and just.

5
6 DATED: October 25, 2023

D.LAW, INC.

7
8 By



Emil Davtyan
David Yeremian
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
DAVID LORD LINDSAY
and the putative class

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DATED: October 25, 2023

By

By Roman Shohid

Emil Davtyan
David Yeremian
Roman Shkodnik
Amanda Fazio
Attorneys for Plaintiff
DAVID LORD LINDSAY
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Joshua Mizrahi
jmizrahi@buchalter.com
BUCHALTER
 1000 Wilshire Boulevard, Suite 1500
 Los Angeles, CA 90017-1730

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above transmission.

Executed on October 25, 2023, at Glendale, California.

Natalia Bermudes
Natalia Bermudes