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NORIELL HOFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

(UNLIMITED JURISDICTION)

NORIELL HOFF, individually, and on behalf
of other aggrieved employees pursuant to the
Labor Code Private Attorneys General Act
of 2004,

Plaintiff,

vs.

ANTHEM MECHANICAL, a California
corporation; MICHAEL SOLOMON, an
individual; and DOES 1 to 25, inclusive,

Defendant(s).

Case No.: **CVRI 2401199**

COMPLAINT FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*); and
- 9) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff, NORIELL HOFF (hereafter “Plaintiff”), individually, and on behalf of other
2 Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this individual and representative action based on alleged
5 violations of the California Labor Code, Industrial Welfare Commission Order No. 4-2001
6 (hereafter “the Wage Order”) and the Business and Professions Code against ANTHEM
7 MECHANICAL, a California corporation; MICHAEL SOLOMON, an individual; and DOES
8 1 to 25, inclusive, (collectively “ANTHEM” or “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him, the State of California, and other similarly situated aggrieved current and former non-
11 exempt hourly employees who worked for Defendants in California at any time during the
12 relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
13 Private Attorneys General Act of 2004 (“PAGA”), for civil penalties and other related relief.
14 These claims are based on Defendants’ alleged failures to: (1) pay all wages earned for all
15 hours worked at the correct rates of pay; (2) provide all rest breaks and meal periods; (3)
16 indemnify for business expenses; (4) provide accurate and complete written wage statements;
17 (5) timely pay wages during and upon termination of employment; and (6) fairly compete.
18 Accordingly, Plaintiff now seeks to recover unpaid wages, civil penalties, and related relief
19 through this action.

20 **JURISDICTION AND VENUE**

21 3. Jurisdiction and venue are proper in this Court and this action is properly filed
22 in the County of Riverside because Defendants ANTHEM MECHANICAL, a California
23 corporation; MICHAEL SOLOMON, an individual; and DOES 1 to 25, inclusive, do business
24 in the County of Riverside and because Defendants’ obligations and liabilities arise therein,
25 and because the work that was performed by Plaintiff in the County of Riverside is the subject
26 of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

27 **THE PARTIES**

28 4. Plaintiff Noriel Hoff is a resident of the city of Desert Hot Springs in the county

1 of Riverside. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
2 California Code of Regulations Section 11040 and an “Aggrieved Employee” within the
3 meaning of Labor Code Section 2699(c).

4 5. Defendant ANTHEM MECHANICAL is a corporation organized and existing
5 under the laws of California and a citizen of California based on Plaintiff’s information and
6 belief.

7 6. Defendant MICHAEL SOLOMON is a citizen of California based on Plaintiff’s
8 information and belief.

9 7. In relevant part, Labor Code section 558.1 states:

10 (a) Any employer or other person acting on behalf of an employer, who violates,
11 or causes to be violated, any provision regulating minimum wages or hours and
12 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.

13 (b) For purposes of this section, the term “other person acting on behalf of an
14 employer” is limited to a natural person who is an owner, director, officer, or
15 managing agent of the employer, and the term “managing agent” has the same
meaning as in subdivision (b) of Section 3294 of the Civil Code.

16 8. Based on Plaintiff’s information and belief, Defendant MICHAEL SOLOMON
17 is a natural person, and an owner, director, officer, and/or managing agent of ANTHEM
18 MECHANICAL, who directly or indirectly, or through his agent, employed or exercised
19 control over the wages, hours, or working conditions of Plaintiff and the Aggrieved Employees
20 (defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees for his
21 violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and
22 2802 pursuant to Labor Code section 558.1.

23 9. The “Aggrieved Employees” are all non-exempt hourly employees, exempt
24 salaried employees, and misclassified exempt salaried employees who worked for Defendants
25 in California during the relevant time period pursuant to California Labor Code section 2698,
26 et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

27 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but

1 is informed and believes and thereon alleges that said defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
4 defendants when ascertained.

5 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
7 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
8 course and scope of such agency or employment, and with the approval and ratification of each
9 of the other Defendants.

10 12. Plaintiff is informed and believes and thereon alleges that each and every one of
11 the acts and omissions alleged herein were performed by, and/or are attributable to, all
12 Defendants, each acting as agents and/or employees, and/or under the direction and control of
13 each of the other Defendants, and that said acts and failures to act were within the course and
14 scope of said agency, employment, and/or direction and control.

15 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
17 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
18 Employees in accordance with applicable California labor laws as alleged herein.

19 **GENERAL ALLEGATIONS**

20 14. ANTHEM first began to employ Plaintiff on or around March 6, 2023 as a
21 “Commercial Construction Associate” for HVAC installation. Plaintiff reported to work at the
22 Spotlight 29 Casino located at 46200 Harrison Place in Coachella, California. Plaintiff’s job
23 duties included installation and maintenance of air condition units. Plaintiff generally worked
24 Monday-Friday from approximately 5:00 a.m. to 1:30 p.m., and his latest rate of pay was
25 approximately \$25.00 per hour. Plaintiff’s employment ended in or around early December
26 2023.

27 15. At all relevant times, ANTHEM issued wages to Plaintiff and all of the other
28 Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times,

1 ANTHEM classified Plaintiff and all of the other Aggrieved Employees as non-exempt
2 employees entitled to the protections of the Labor Code and the Wage Order. ANTHEM
3 employed Plaintiff and all of the Aggrieved Employees more than six, eight, and ten hours per
4 day.

5 16. ANTHEM failed to pay Plaintiff and other Aggrieved Employees for all time
6 worked or subject to its control. Plaintiff and the other Aggrieved Employees were not paid for
7 all hours worked and consistently worked “off the clock” in that the company had a policy and
8 practice of rounding down work hours to the detriment of employees, which is akin to a
9 minimum wage violation. Moreover, Plaintiff and other employees had to follow a certain
10 protocol that resulted in them being under the control of the employer and for which they were
11 not paid. For instance, when Plaintiff would report to work in the morning, he would have to
12 wait in a line in order to turn his ID in and receive his badge. Once that was done, Plaintiff
13 would then have to walk for about 5 minutes and then clock-in for work. This entire process
14 would take at least 5-8 minutes if not longer in the morning. The same process would also be
15 done for employees upon return from lunch, or anytime upon entering and leaving the
16 premises. As such, there was a decent amount of time on a daily basis wherein employees such
17 as Plaintiff and others were under the control of the employer but were not paid for that time.
18 This time would not be considered de minimis under the law. Moreover, and despite requiring
19 Plaintiff and the other Aggrieved Employees to purchase and use their own personal tools,
20 ANTHEM did not compensate Plaintiff and the others twice the minimum wage rate in
21 violation of Wage Order 4-2001, section 9(B).

22 17. Due to the above “off the clock” violations, ANTHEM failed to pay Plaintiff
23 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees’
24 actual work hours, which included the “off the clock” work as described above, entitled them to
25 overtime, however, it was not company policy to keep accurate track of all hours worked and to
26 pay employees the accurate amount of overtime, especially since the “off the clock” work was
27 not factored into the equation. Furthermore, any incentive payments and/or bonus payments
28 were not factored into employees’ regular rate of pay for purposes of deciphering the correct

1 overtime rate of pay. In addition, any bonus and/or incentive payments were not factored into
2 the correct meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021)
3 11 Cal. 5th 858, 863.

4 18. ANTHEM failed to provide all compliant meal periods and authorize and permit
5 all compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.
6 Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-
7 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
8 minute rest periods for every four hours or major fraction thereof worked. Due to the workload,
9 Plaintiff would not be able to take timely, uninterrupted meal periods before the 5th or 10th hour
10 worked. On information and belief, ANTHEM did not keep track of Plaintiff's and the
11 Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th
12 58, where time records do not facially show an employee took a compliant meal period, a
13 rebuttable presumption arises that the employer failed to provide it, giving rise to a meal period
14 violation. Moreover, when Plaintiff and the other Aggrieved Employees took their meal
15 periods, ANTHEM management, including lead Braulio (last name unknown) and supervisor
16 Eddie (last name unknown) would interrupt them with requests for assistance. Similarly,
17 Plaintiff and the other Aggrieved Employees were not able to take their two 10-minute rest
18 breaks due to the workload. Plaintiff was only allowed to take one 15-minute rest period
19 throughout his entire shift, which, when Plaintiff was able to take, would still get interrupted by
20 Braulio asking Plaintiff to perform tasks. On information and belief, ANTHEM did not provide
21 premium wages for these meal and rest break violations; if ANTHEM did provide premium
22 wages, they were not paid at the correct rate, as explained above.

23 19. ANTHEM failed to reimburse Plaintiff and the other Aggrieved Employees for
24 business expenses they incurred in direct consequence of the discharge of their duties.
25 ANTHEM required Plaintiff and the other Aggrieved Employees to provide and use their own
26 tools, and to purchase specific tools to perform their assigned job duties. Such tools included,
27 but are not limited to, impacts, drills, a battery charger, among others. However, ANTHEM did
28 not provide these items and did not reimburse Plaintiff and the other Aggrieved Employees for

1 these expenses. Accordingly, ANTHEM was in violation of California Labor Code sections
2 2800 and 2802.

3 20. ANTHEM failed to pay its employees all wages due to them within any time
4 period specified by California Labor Code section 204, including the minimum wages and
5 overtime as described above as well as meal/rest break premiums. ANTHEM did not provide
6 Plaintiff and other Aggrieved Employees accurate, itemized wage statements. Wage statements
7 must include, among other things, total hours worked by the employee. Labor Code §
8 226(a)(2). ANTHEM issued wage statements that inaccurately reflected total hours worked,
9 gross and net wages earned, and the number of hours worked at each hourly rate because of
10 ANTHEM's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2),
11 (5), (9). ANTHEM's failure to maintain accurate records as to the hours worked daily by
12 employees also constitutes a violation of Labor Code section 1174(d).

13 21. Finally, because ANTHEM did not properly pay all wages earned as explained
14 herein, ANTHEM also failed to pay final wages owed to Plaintiff and other Aggrieved
15 Employees in violation of Labor Code section 203. These earned but unpaid wages include
16 minimum wages and compensation for all hours worked, overtime compensation, premium pay
17 for missed meal and rest breaks, and business expense reimbursement, among others.

18 22. Moreover, ANTHEM failed to provide paid sick leave and/or correctly
19 calculated sick leave wages to Plaintiff and the other Aggrieved Employees and failed to
20 provide Plaintiff and all of the other Aggrieved Employees with statements of sick leave
21 available, or paid time off in lieu of sick leave, in violation of Labor Code sections 233 and
22 246.

23 23. ANTHEM has also violated Labor Code section 558 and engaged in business
24 practices which violate Business and Professions Code Section 17200.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

3 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

4 **(By Plaintiff against all Defendants)**

5 24. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

6 25. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
7 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
8 and the Wage Order.

9 26. Section 2(K) of the Wage Order defines “hours worked” as “the time during
10 which an employee is subject to the control of an employer, and includes all the time the
11 employee is suffered or permitted to work, whether or not required to do so.”

12 27. Section 3 of the Wage Order states:

13 (A) Daily Overtime - General Provisions

14 (1) The following overtime provisions are applicable to
15 employees 18 years of age or over and to employees 16 or
16 17 years of age who are not required by law to attend
17 school and are not otherwise prohibited by law from
18 engaging in the subject work. Such employees shall not
19 be employed more than eight (8) hours in any workday or
20 more than 40 hours in any workweek unless the employee
21 receives one and one-half (1 ½) times such employee’s
22 regular rate of pay for all hours worked over 40 hours in
23 the workweek. Eight (8) hours of labor constitutes a day’s
24 work. Employment beyond eight (8) hours in any
25 workday or more than six (6) days in any workweek is
26 permissible provided the employee is compensated for
27 such overtime at not less than:

23 (a) One and one-half (1 ½) times the employee’s
24 regular rate of pay for all hours worked in excess
25 of eight (8) hours up to and including 12 hours in
26 any workday, and for the first eight (8) hours
27 worked on the seventh (7th) consecutive day of
28 work in a workweek.

27 (b) Double the employee’s regular rate of pay for
28 all hours worked in excess of 12 hours in any
workday and for all hours worked in excess of

eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

28. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

29. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

30. California Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

31. California Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

32. California Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

1 33. In conjunction, these provisions of the California Labor Code require employers
2 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
3 for all hours worked, including unrecorded hours when the employer knew or reasonably should
4 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
5 *Co.* (2000) 22 Cal.4th 575, 585.)

6 34. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
7 and forty (40) hours in one workweek without compensating him for such time worked at the
8 premium rates required by California law.

9 35. As described more fully above, Defendants failed to pay all minimum, regular,
10 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
11 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
12 based on correct regular rates of pay.

13 36. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
14 amount, subject to proof, to the extent that he was not paid the full amount of wages earned
15 during each pay period during the applicable limitations period, including minimum, overtime,
16 and double-time wages.

17 37. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
18 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
19 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REST BREAKS**

22 **(Lab. Code §§ 226.7 and 1198)**

23 **(By Plaintiff against all Defendants)**

24 38. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 39. At all relevant times during the applicable limitations period, Plaintiff was a
26 non-exempt employee of Defendants and entitled to the benefits and protections of California
27 Labor Code §§ 226.7, 1198, and the Wage Order.

28 40. Labor Code § 1198 states,

1 “The maximum hours of work and the standard conditions of labor
2 fixed by the commission shall be the maximum hours of work and the
3 standard conditions of labor for employees. The employment of any
4 employee for longer hours than those fixed by the order or under
5 conditions of labor prohibited by the order is unlawful.”

6 41. In relevant part, Section 12 of the Wage Order states:

7 Every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work
9 period. The authorized rest period time shall be based on the total hours
10 worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof. However, a rest period need not be
12 authorized for employees whose total daily work time is less than three
13 and one-half (3 1/2) hours. Authorized rest period time shall be counted
14 as hours worked for which there shall be no deduction from wages.

15 42. In addition, Labor Code Section 226.7 states

16 (b) An employer shall not require an employee to work during a
17 meal or rest or recovery period mandated pursuant to an applicable
18 statute, or applicable regulation, standard, or order of the Industrial
19 Welfare Commission, the Occupational Safety and Health Standards
20 Board, or the Division of Occupational Safety and Health.

21 (c) If an employer fails to provide an employee a meal or rest or
22 recovery period in accordance with a state law, including, but not
23 limited to, an applicable statute or applicable regulation, standard, or
24 order of the Industrial Welfare Commission, the Occupational Safety
25 and Health Standards Board, or the Division of Occupational Safety and
26 Health, the employer shall pay the employee one additional hour of pay
27 at the employee's regular rate of compensation for each workday that
28 the meal or rest or recovery period is not provided.

43. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

44. Defendants failed to authorize and permit Plaintiff to take compliant rest
periods and failed to pay one hour of correctly-calculated premium pay for each day such a
rest period was not provided.

45. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
an amount subject to proof to the extent he was not paid additional wages owed for all rest
breaks not provided to him.

46. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff against all Defendants)

47. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

48. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

49. Labor Code § 1198 states,

“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. 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.”

50. In relevant part, Labor Code Section 512 states

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

51. In relevant part, Section 11 of the Wage Order states:

(A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on

duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

52. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

53. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

54. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all meal periods not provided to him.

55. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

56. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

57. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the Wage Order.

1 58. In pertinent part, California Labor Code § 2802(a) states:

2 An employer shall indemnify his or her employee[s] for all necessary
3 expenditures incurred by the employee in direct consequence of the
4 discharge of his or her duties.

5 59. Section 9(B) of the Wage Order states:

6 When tools or equipment are required by the employer or are necessary to
7 the performance of a job, such tools and equipment shall be provided and
8 maintained by the employer, except that an employee whose wages are at
9 least two (2) times the minimum wage provided herein may be required to
 provide and maintain hand tools and equipment customarily required by
 the trade or craft.

10 60. California Labor Code § 1198 prohibits employers from employing their
11 employees under conditions prohibited by the Wage Order.

12 61. At all relevant times, ANTHEM required Plaintiff to use his own tools and to
13 purchase specific tools to perform their assigned job duties. Such tools included, but are not
14 limited to, impacts, drills, a battery charger, among others. However, ANTHEM did not provide
15 these items and did not reimburse Plaintiff for these tools expenses.

16 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
17 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
18 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
19 of performing his duties.

20 63. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
21 expenditures and losses and interest due and owing to within three years (3) of the date of the
22 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
23 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

26 **(California Labor Code Section 226)**

27 **(By Plaintiff against all Defendants)**

28 64. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

65. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

66. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, all hours worked, gross wages earned, including minimum wages, overtime wages, and premium pay for missed meal and rest breaks, net wages earned, total hours worked by the employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

67. Pursuant to California Labor Code Section 226(e), Plaintiff 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 exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

68. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

69. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201-203)

(By Plaintiff against all Defendants)

70. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

1 71. Pursuant to California Labor Code Section 201(a), an employer who discharges
2 an employee must immediately pay for all compensation due and owing.

3 72. Pursuant to California Labor Code Section 202, when an employee resigns, the
4 employer must pay all compensation due and owing within 72 hours of resignation, or on the
5 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

6 73. Pursuant to California Labor Code Section 203, if an employer willfully fails to
7 pay, without abatement or reduction, any wages of an employee whose employment ends, the
8 wages of the employee shall continue as a penalty from the due date at the same rate until paid
9 or until an action is commenced; however, the wages shall not continue for more than 30 days
10 for failure to pay an employee owed wages.

11 74. After Plaintiff's employment with Defendants ended, Defendants willfully
12 refused and continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

13 75. Under this cause of action, Plaintiff prays for penalties due under the statutes
14 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
15 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
16 immediately preceding the filing of this lawsuit.

17 76. Under this cause of action, Plaintiff also prays for attorney's fees and costs
18 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
19 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

20 77. Under this cause of action, Plaintiff prays for penalties due under the statutes
21 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
22 proof at trial.

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

25 **(California Labor Code Section 204)**

26 **(By Plaintiff against all Defendants)**

27 78. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

28 79. California Labor Code Section 204 establishes the fundamental right of all

1 employees in the State of California to be paid wages in a timely fashion for their work.

2 80. At all times relevant during the liability period, Defendants failed to pay
3 Plaintiff the full amount of all owed wages when due as required by California Labor Code
4 Section 204.

5 81. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
6 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
7 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
8 worked, including the minimum wage, overtime hours, double time hours, and premium pay
9 for missed meal and rest breaks.

10 82. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
11 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
12 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
13 directly from Defendants' records or indirectly based on information from Defendants' records.

14 83. Under this cause of action, Plaintiff prays for penalties due under the statutes
15 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
16 proof at trial.

17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code §§ 2698, et seq.)**

20 **(By Plaintiff against all Defendants)**

21 84. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 85. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
23 2004 ("PAGA") because he was employed by Defendants during the applicable statutory
24 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
25 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
26 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
27 PAGA, plus reasonable attorney's fees and costs in this representative action.

28 86. During the applicable time period, Defendants violated California Labor Code

1 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and
2 2802.

3 87. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
4 behalf of themselves and other current or former employees, to bring a civil action to recover
5 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

6 88. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
7 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
8 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 558,
9 558.1, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the
10 following amounts:

11 A. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
13 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
14 established by California Labor Code § 210).

15 B. For violations of California Labor Code § 226(a), two hundred fifty
16 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
17 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
18 established by California Labor Code § 226.3).

19 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
20 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
21 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
22 established by California Labor Code § 558).

23 D. For violations of California Labor Code § 1174, five hundred dollars
24 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
25 California Labor Code § 1174.5).

26 E. For violations of California Labor Code § 1197, one hundred dollars
27 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
28 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,

1 per pay period (regardless of whether the initial violations were intentionally committed)
2 (penalty amounts established by California Labor Code § 1197.1).

3 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233,
4 246, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per
5 pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
6 Employee per pay period for each subsequent violation (penalty amounts established by
7 California Labor Code § 2699(f)(2)).

8 G. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually
9 is entitled to recover civil penalties for each of the Defendants' violations of California Labor
10 Code §1102.5 during the applicable limitations period, an amount not to exceed \$10,000 for
11 each violation by Defendants of California Labor Code § 1102.5(c), as well as attorney's fees
12 and costs under Labor Code § 2699(g) (penalty amounts established by California Labor Code
13 § 1102.5(f)).

14 89. Plaintiff has complied with the procedures for bringing suit specified in
15 California Labor Code § 2699.3. By letter dated September 15, 2023, Plaintiff filed written
16 notice online with the Labor and Workforce Development Agency ("LWDA") and gave written
17 notice by certified mail to Defendants of the specific provisions of the California Labor Code
18 alleged to have been violated, including the facts and theories to support the alleged violations.
19 Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has
20 failed to take action in response within 65 calendar days of the date of Plaintiff's notice, but
21 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it
22 does not intend to investigate these allegations.

23 90. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
24 Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in
25 connection with their claims for civil penalties.

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1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

4 **(By Plaintiff against all Defendants except Michael Solomon)**

5 91. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 92. At all relevant times during the applicable limitations period, Plaintiff has been
7 an employee of Defendants and entitled to the benefits and protections of the Business and
8 Professions Code §§ 17200, *et seq.*

9 93. Defendants engaged in unfair competition by failing to 1) pay employees for all
10 hours worked at the correct rates of pay and 2) pay their employees premium wages for
11 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
12 employees for necessary business expenses incurred in the course of performing their duties.

13 94. The unlawful conduct of Defendants alleged herein amounts to and constitutes
14 unfair competition within the meaning of California Business & Professions Code §§ 17200,
15 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
16 unfairly gained a competitive advantage over other comparable companies doing business in
17 California that comply with their legal obligations to, among other things, to pay their
18 employees premium wages for workdays in which they did not provide employees with one or
19 more meal and rest periods, indemnify them for all business expenses incurred during the
20 course of performing their duties, including, but not limited to, personal tools, and pay them
21 all wages earned.

22 95. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
23 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
24 hours worked, failed to provide him with premium wages for missed meal and rest periods,
25 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
26 duties.

27 96. Pursuant to California Business & Professions Code § 17203, Plaintiff is
28 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him

1 or otherwise retained by means of their unlawful and unfair business practices.

2 97. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
3 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
4 benefit doctrine and/or the common fund doctrine.

5 98. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
6 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
7 thereon, as permitted by law, all in amounts subject to proof.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 10 1. For general damages according to proof;
- 11 2. For special and consequential damages to the extent allowed by law;
- 12 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
13 subject to proof at trial;
- 14 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
15 5. proof at trial;
- 16 6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
17 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 18 7. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
19 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 20 8. For maximum civil penalties available under the Labor Code and applicable Wage
21 Order against Defendants as described more particularly in the Complaint;
- 22 9. For restitution and disgorgement for all unfair business practices by Defendant
23 ANTHEM MECHANICAL against Plaintiff in an amount according to proof;
- 24 10. For an order enjoining Defendant ANTHEM MECHANICAL from further unfair and
25 unlawful business practices in violation of Business and Professions Code Sections
26 17200, et seq.;
- 27 11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
28 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated

1 damages, damages, penalties, and waiting time penalties according to proof to the
2 extent permitted by law;

3 12. For the imposition of civil penalties and/or statutory penalties;

4 13. For all interest as allowed by law;

5 14. For all costs and disbursements incurred in this suit;

6 15. Reasonable attorney's fees where available by law, including but not limited to,
7 pursuant to, Code of Civil Procedure section 1021.5, and/or other applicable laws; and

8 16. For such other and further relief as this Court may deem proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial on all issues so triable.

11
12 Dated: March 1, 2024

MM LAW, APC

13
14 By Maralle Messrelian
15 Maralle Messrelian, Esq.
16 Attorney for Plaintiff,
17 NORIELL HOFF
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