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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARIO MARISCAL JIMENEZ, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

SIGNTECH ELECTRICAL ADVERTISING,
INC., a California Corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. 37-2023-00038995-CU-OE-CTL

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

- (1) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§
204, 510, 558, 1194, 1198);**
- (2) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (3) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516, 558);**
- (4) FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS
(LABOR CODE § 226 *et seq.*);**
- (5) FAILURE TO PAY ALL WAGES
OWED UPON TERMINATION
(LABOR CODE §§ 201-203);**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/13/2023 at 03:33:00 PM

Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

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- (6) UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and
 - (7) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*)
- DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Mario Mariscal Jimenez ("Plaintiff"), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint ("FAC") against
3 Defendants Signtech Electrical Advertising, Inc., a California Corporation; and DOES 1 to 100, inclusive
4 (collectively "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this Complaint
7 for recovery of unpaid wages and penalties under Bus. & Prof. Code § § 17200 *et seq.*, Labor Code §§
8 201-203, 204, 218 *et seq.*, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1198, 2698 *et seq.*, and Industrial
9 Welfare Commission Wage No. 1 ("Wage Order 1"), in addition to seeking declaratory relief and
10 restitution. This class action is brought pursuant to California Code of Civil Procedure § 382. This Court
11 has jurisdiction over Defendants' violations of the California Labor Code because the amount in
12 controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue as to each Defendant is proper in this judicial district pursuant to California Code
15 of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in the County of San Diego. Further, at all times relevant herein Defendants maintained offices
17 and conducted business within the County of San Diego.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff
20 was, and currently is, a California resident. During the four years immediately preceding the filing of the
21 FAC in this action and within the statute of limitations periods applicable to each cause of action pled
22 herein, Plaintiff was employed by Defendants as an hourly employee. Plaintiff was, and is, a victim of
23 Defendants' policies and/or practices complained of herein, lost money and/or property, and has been
24 deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 218.5, 218.6, 226 *et*
25 *seq.*, 226.7, 510, 512, 516, 558, 1194, 1198, 2698 *et seq.*, and Wage Order 1, which sets employment
26 standards for the manufacturing industry.

27 4. Plaintiff is informed and believes, and based thereon alleges, that during the four years
28 preceding the filing of the Complaint and continuing to the present, Defendants did (and do) business as

1 a leader in designing, manufacturing, installing and maintaining interior and exterior signs for retail and
2 commercial customers in the County of San Diego and State of California, and employed Plaintiff in the
3 State of California, and, therefore, were (and are) doing business in the County of San Diego and the State
4 of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC
8 when such true names and capacities are discovered. Plaintiff is informed, and believes, and based
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
11 and the Classes (as defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs,
12 injuries and damages complained of herein.

13 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein,
20 Defendants were and are the employers of Plaintiff and all members of the Classes.

15 7. At all times herein mentioned, each of said Defendants participated in the doing of the
16 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
17 and each of them, were the agents, servants, and employees of each and every one of the other
18 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within
19 the course and scope of said agency and employment. Defendants, and each of them, approved of,
20 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.
21 At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint
22 venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance
23 of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants
24 were joint employers for all purposes of Plaintiff and all members of the Classes.

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27 **GENERAL FACTUAL ALLEGATIONS**

1 8. Plaintiff worked for Defendants as a non-exempt Polisher/Preparer starting in
2 approximately 2017. Plaintiff was generally scheduled to work Monday – Friday from approximately
3 6:00 a.m. to 2:30 p.m. However, Plaintiff often worked in excess of 8 hours per day and/or 40 hours per
4 workweek.

5 9. Throughout Plaintiff’s employment, Defendants’ policies and/or procedures required
6 Plaintiff to record his start and stop time on a company computer by inputting his employee card and/or
7 number.

8 10. While working for Defendants, Plaintiff routinely worked in excess of eight hours per
9 workday, in excess of 12 hours per workday and/or more than 40 hours per workweek, but did not receive
10 overtime compensation equal to one and one-half times and/or equal to two times his regular rate of pay
11 for working overtime hours. Specifically, Plaintiff received bonuses and/or other forms of pay not
12 excludable as a matter of law when calculating an employee’s regular rate (hereinafter the
13 aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite Defendants’
14 payment of Incentive Pay to Plaintiff, Defendants failed to include all forms of Incentive Pay when
15 calculating Plaintiff’s regular rate of pay, thereby causing Plaintiff to be underpaid all of his required
16 overtime wages. Rather, Plaintiff was paid an amount less than one and a half times (or two times in the
17 case of double-time hours) his regular rate of pay, as Defendants failed to include the various forms of
18 Incentive Pay earned during corresponding time periods that were required to be included in the regular
19 rate of pay. As a result of Defendants’ policies and/or practices that fail to compensate for all hours
20 worked at the correct overtime rate and/or double overtime rate, Plaintiff and other hourly, non-exempt
21 employees were deprived all required overtime wages earned.

22 11. Throughout Plaintiff’s employment with Defendants, Plaintiff was not provided all legally
23 required meal periods due to Defendants’ meal period policies and practices. Specifically, due to the
24 work demands imposed by Defendants, Plaintiff either was not provided with a lunch, or was often
25 prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which
26 were at least 30 minutes in length. For example, Plaintiff scheduled start time was 6:00 a.m., however,
27 Defendants did not schedule Plaintiff’s meal period until 11:30 a.m., which resulted in late and/or
28 otherwise unlawful meal periods. This policy and practice of Defendants not providing lawful meal

periods to Plaintiff and/or requiring Plaintiff and other non-exempt employees to take a meal period after the end of the fifth hour of work violates California law.

12. Additionally, on the occasions when Plaintiff worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period due to Defendants' meal period policies and practices that fail to provide for a second meal period for shifts over 10.0 hours.

13. Although Plaintiff was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7.

14. Plaintiff was also not authorized and permitted to take all required rest periods due to Defendants' rest period policies/practices. Specifically, due to the work demands imposed by Defendants, Defendants' rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*.

15. Although Plaintiff was not provided with all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7.

16. As a result of Defendants' failure to pay all overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

17. As a further result of Defendants' failure to pay all overtime wages, and failure to pay all meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon separation of his employment with Defendants.

CLASS ACTION ALLEGATIONS

18. Class Definitions: Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the California Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight hours per day and/or forty hours per week and were subjected to Defendants' timekeeping policies and practices, during the four years immediately preceding the filing of the lawsuit through the present.

- b. The Meal Period Class consists of all of Defendants' current and former hourly employees who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of the lawsuit through the present.
- c. The Rest Period Class consists of all of Defendants' current and former hourly employees who worked at least one shift in excess of 3.5 hours during the four years immediately preceding the filing of the lawsuit through the present.
- d. The Wage Statement Class consists of all members of the (i) Overtime Wage Class; (ii) Meal Period Class; and/or (iii) Rest Period Class, who received a wage statement from Defendants during the one year immediately preceding the filing of the lawsuit through the present.
- e. The Waiting Time Penalty Class consists of all members of the: (i) Overtime Class; (ii) Meal Period Class; and/or (iii) Rest Period Class, who separated their employment with Defendants during the three years immediately preceding the filing of the lawsuit through the present.
- f. The UCL Class consists of members of the: (i) Overtime Class; (ii) Meal Period Class; and/or (iii) Rest Period Class,

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- a. Whether Defendants' properly paid all overtime wages at the correct regular rate of pay and/or paid for all hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Whether Defendants provided legally compliant meal periods to members of the Meal

1 Period Class pursuant to Labor Code §§ 226.7 and 512;

2 c. Whether Defendants permitted and authorized legally compliant rest periods to members
3 of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

4 d. Whether Defendants furnished legally compliant wage statements to members of the
5 Wage Statement Class pursuant to Labor Code 226;

6 e. Whether Defendants paid all final wages owed to their terminated/separated employees at
7 the time of said termination/separation pursuant to Labor Code §§ 201-203; and

8 f. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business
9 practices by and through the wage and hour policies and practices described above, and whether as a
10 result Defendants owe the classes restitution.

11 21. **Predominance of Common Questions:** Common questions of law and fact predominate
12 over questions that affect only individual members of the Classes. The common questions of law set forth
13 above are numerous and substantial and stem from Defendants' policies and/or practices applicable to
14 each individual class member, such as Defendants' such as Defendants' uniform timekeeping, method of
15 calculating the regular rate of pay, calculating overtime wages, including double overtime wages, as well
16 as uniform meal and rest period practices. As such, the common questions predominate over individual
17 questions concerning each individual class member's showing as to his or her eligibility for recovery or
18 as to the amount of his or her damages.

19 22. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff
20 was employed by Defendants as a non-exempt employee in California during the statutes of limitation
21 applicable to each cause of action pled in the lawsuit in this action. As alleged herein, Plaintiff, like the
22 members of the Classes, was deprived of all legally required overtime, and double overtime wages, was
23 not provided all legally required meal and rest breaks, was furnished with inaccurate and incomplete wage
24 statements, and was not paid all wages owed upon his separation of employment with Defendants.

25 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
26 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys
27 are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff.
28 Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and

1 federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the
2 members of the Classes.

3 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
4 important public interest in establishing minimum working conditions and standards in California. These
5 laws and labor standards protect the average working employee from exploitation by employers who have
6 the responsibility to follow the laws and who may seek to take advantage of superior economic and
7 bargaining power in setting onerous terms and conditions of employment. The nature of this action and
8 the format of laws available to Plaintiff and members of the Classes make the class action format a
9 particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee
10 were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable
11 advantage since they would be able to exploit and overwhelm the limited resources of each individual
12 plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the
13 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees
20 who would be disinclined to file an action against their former and/or current employer for real and
15 justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further,
16 the prosecution of separate actions by the individual Class Members, even if possible, would create a
17 substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual Class
18 Members against Defendants herein; and which would establish potentially incompatible standards of
19 conduct for Defendants; and/or legal determinations with respect to individual Class Members which
20 would, as a practical matter, be dispositive of the interest of the other Class Members not parties to
21 adjudications or which would substantially impair or impede the ability of the Class Members to protect
22 their interests. Further, the claims of the individual members of the class are not sufficiently large to
23 warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending
24 thereto.

25 25. As such, each of the Classes identified in Paragraph 18 is maintainable as a Class under §
26 382 of the Code of Civil Procedure.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

3 **(AGAINST ALL DEFENDANTS)**

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

5 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198
6 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked
7 (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure
8 to pay all overtime compensation for overtime work performed.

9 28. At all times relevant herein, Defendants were required to properly compensate Plaintiff and
10 the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§
11 510 and 1194, and Wage Order 1. Labor Code § 510 and Wage Order 1, Section 3 require an employer
12 to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours
13 per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 1, Section
20 3 also require an employer to pay an employee double the employee’s regular rate for work in excess of
15 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the
16 workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8
17 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the
18 members of the Overtime Class at one and one-half times or two times their regular rate of pay for such
19 hours. Defendants paid Plaintiff and the members of the Overtime Class an amount less than one and a
20 half times (or two times in the case of double-time hours) his regular rate of pay, as Defendants failed to
21 include the various forms of Incentive Pay earned during corresponding time periods that were required
22 to be included in the regular rate of pay.

23 29. The foregoing practices and policies are unlawful and create entitlement to recovery by
24 Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime
25 premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys’
26 fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage Order
27 1, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5, and Civil
28 Code §§ 3287(b) and 3289.

FAILURE TO PROVIDE MEAL PERIODS
(AGAINST ALL DEFENDANTS)

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the provisions of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and

THIRD CAUSE OF ACTION

(AGAINST ALL DEFENDANTS)

34. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest for each four (4) hour period worked, or major fraction thereof.

36. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 226.9, 226.10, 226.11, 226.12, 226.13, 226.14, 226.15, 226.16, 226.17, 226.18, 226.19, 226.20, 226.21, 226.22, 226.23, 226.24, 226.25, 226.26, 226.27, 226.28, 226.29, 226.30, 226.31, 226.32, 226.33, 226.34, 226.35, 226.36, 226.37, 226.38, 226.39, 226.40, 226.41, 226.42, 226.43, 226.44, 226.45, 226.46, 226.47, 226.48, 226.49, 226.50, 226.51, 226.52, 226.53, 226.54, 226.55, 226.56, 226.57, 226.58, and Civil Code §§ 3287(b) and 3289.

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly
6 and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of
7 the Wage Statement Class with complete and accurate wage statements with respect to their actual regular
8 straight time, overtime, and double time hours worked, the hourly rate at which regular straight time,
9 overtime, and double time were being paid, total gross wages earned, total net wages earned, in violation
10 of Labor Code § 226 *et seq.*

11 39. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with
12 complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among
13 other things, the non-payment of all earned overtime and minimum wages, and meal and rest period
20 premium wages, and deprived them of the information necessary to identify the discrepancies in
15 Defendants' reported data.

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

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

22 **(AGAINST ALL DEFENDANTS)**

23 41. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set
24 forth herein.

25 42. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an
26 employer to pay all wages immediately at the time of termination of employment in the event the employer
27 discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In
28 the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's

1 wages become due and payable not later than 72 hours upon said employee's last date of employment.

2 43. Defendants failed to timely pay Plaintiff all of his final wages at the time of termination,
3 which include, among other things, underpaid minimum, overtime, double time wages and meal and rest
4 period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
5 matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time
6 Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements
7 of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
8 Labor Code § 203.

9 44. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time
10 Penalty Class their earned wages upon separation from employment results in a continued payment of
11 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the
12 Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
13 attorneys' fees and costs of suit.

20 **SIXTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(AGAINST ALL DEFENDANTS)**

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

18 46. Defendants have engaged and continue to engage in unfair and/or unlawful business
19 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing
20 to properly pay all minimum, overtime, and double time wages, provide all required meal periods and
21 authorize and permit all required rest periods, or pay premium payments in lieu thereof.

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

27 48. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein,
28 Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as

1 necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by
2 Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

3 49. The acts complained of herein occurred within the last four years immediately preceding
4 the filing of the lawsuit in this action.

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

10 **SEVENTH CAUSE OF ACTION**

11 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

12 **(AGAINST ALL DEFENDANTS)**

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

14 52. Defendants have committed several Labor Code violations against Plaintiff and other
15 Aggrieved Employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor Code § 2698 et
16 seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action against
17 Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of
18 California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1)
19 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code §
20 226.3 per employee per pay period; and/or (2) \$100.00 for each initial violation and \$200.00 for each
21 subsequent violation per employee per pay period for those violations of the Labor Code for which no
22 civil penalty is specifically provided, based on the following Labor Code violations:

23 a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay
24 Plaintiff and other aggrieved employees all overtime compensation earned;

25 b) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally
26 required meal periods and failing to pay meal period premiums to Plaintiff and the
27 aggrieved employees;
28

- 1 c) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally
2 required rest periods and failing to pay rest period premiums to Plaintiff and the
3 aggrieved employees;
- 4 d) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved
5 employees with accurate and compliant itemized wage statements;
- 6 e) Defendants violated Labor Code §§ 204 and 210 by failing to pay Plaintiff and other
7 aggrieved employees all earned wages at least twice during each calendar month;
- 8 f) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final
9 wages due to Plaintiff and other aggrieved employees; and
- 10 g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf
11 of Plaintiff and other aggrieved employees.

12 53. On September 7, 2023, Plaintiff notified Defendants via certified mail, and the California
13 Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the
14 California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor
15 Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 52
16 (a)-(g). Attached hereto as **Exhibit 1** is a true and correct copy of the September 7, 2023 correspondence.
17 Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff
18 has exhausted his administrative requirements for bringing a claim under the Labor Code Private
19 Attorneys General Act with respect to these violations.

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

24 **PRAYER**

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

- 27 1. For an order certifying the proposed Classes;
- 28 2. For an order appointing Plaintiff as representative of the Classes;

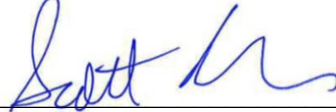
3. For an order appointing Plaintiff's counsel as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts declared by this Court to be in violation of Business & Professions Code § 17200 *et seq.*;
10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 52 (a)-(g) above.
11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;
12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure § 1021.5; and

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

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3 Dated: November 13, 2023

Respectfully submitted,
LIDMAN LAW, APC

4
5 By:



6 Scott M. Lidman
Attorneys for Plaintiff
MARIO MARISCAL JIMENEZ

7
8 **DEMAND FOR JURY TRIAL**

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

10
11 Dated: November 13, 2023

Respectfully submitted,
LIDMAN LAW, APC

12
13 By:



14 Scott M. Lidman
Attorneys for Plaintiff
MARIO MARISCAL JIMENEZ

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

September 7, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Signtech Electrical Advertising, Inc.
c/o Kimra Schauer-Shepherd, Registered Agent
4444 Federal Blvd.
San Diego, CA 92102

Re: *Mario Mariscal Jimenez v. Signtech Electrical Advertising, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Mario Mariscal Jimenez (“Mr. Jimenez”) in claims arising from his employment with Signtech Electrical Advertising, Inc., a California corporation (“Defendant”). Mr. Jimenez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly, non-exempt employees working for Defendant in California and whom Defendant during the one year immediately preceding the date of this letter through the present date, and continuing through a civil judgment if the LWDA takes no action and Mr. Jimenez files a civil lawsuit seeking civil penalties.

Mr. Jimenez worked for Defendant as a non-exempt Polisher/Preparer starting in approximately 2017. Mr. Jimenez was generally scheduled to work Monday – Friday from approximately 6:00 a.m. to 2:30 p.m. However, Mr. Jimenez often worked in excess of 8 hours per day and/or 40 hours per workweek.

Throughout Mr. Jimenez’s employment, Defendant’s policies and/or procedures required Mr. Jimenez and other hourly, non-exempt employees to record their start and stop time on a company computer by inputting their employee card and/or number.

While working for Defendant, Mr. Jimenez and other hourly, non-exempt employees routinely worked in excess of eight hours per workday, in excess of 12 hours per workday and/or more than 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times and/or equal to two times their regular rate of pay for working overtime hours. Specifically, Mr. Jimenez and

other hourly, non-exempt employees received bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Jimenez and other hourly, non-exempt employees, Defendant failed to include all forms of Incentive Pay when calculating their regular rate of pay, thereby causing them to be underpaid all of their required overtime wages. Rather, Mr. Jimenez and other hourly, non-exempt employees were paid an amount less than one and a half times (or two times in the case of double-time hours) his regular rate of pay, as Defendant failed to include the various forms of Incentive Pay earned during corresponding time periods that were required to be included in the regular rate of pay. As a result of Defendant's policies and/or practices that fail to compensate for all hours worked at the correct overtime rate and/or double overtime rate, Mr. Jimenez and other hourly, non-exempt employees were deprived all required overtime wages earned.

Throughout Mr. Jimenez's employment with Defendant, Mr. Jimenez and other hourly, non-exempt employees were not provided all legally required meal periods due to Defendant's meal period policies and practices. Specifically, due to the work demands imposed by Defendant, Mr. Jimenez and other hourly, non-exempt employees either were not provided with a lunch, or was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. For example, Mr. Jimenez's scheduled start time was 6:00 a.m., however, Defendant did not schedule Mr. Jimenez's meal period until 11:30 a.m., which resulted in late and/or otherwise unlawful meal periods. This policy and practice of Defendant not providing lawful meal periods to Mr. Jimenez and/or requiring Mr. Jimenez and other hourly, non-exempt employees to take a meal period after the end of the fifth hour of work violates California law.

Additionally, on the occasions when Mr. Jimenez and other hourly, non-exempt employees worked in excess of 10.0 hours, they were not provided with a second 30-minute meal period due to Defendant's meal period policies and practices that fail to provide for a second meal period for shifts over 10.0 hours.

Although Mr. Jimenez and other hourly, non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Jimenez and other hourly, non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Jimenez and other hourly, non-exempt employees were also not authorized and permitted to take all required rest periods due to Defendant's rest period policies/practices. Specifically, due to the work demands imposed by Defendant, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*.

Although Mr. Jimenez and other hourly, non-exempt employees were not provided with all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Jimenez and other hourly, non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

As a result of Defendant's failure to pay all overtime wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Jimenez and other hourly, non-exempt employees.

As a further result of Defendant's failure to pay all overtime wages, and failure to pay all meal and rest period premium wages, Defendant failed to pay all wages owed to Mr. Jimenez and other hourly, non-exempt employees upon separation of their employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Mr. Jimenez and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "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." This Section further provides, "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." As alleged above, Mr. Jimenez received bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Jimenez, Defendant failed to include all forms of Incentive Pay when calculating Mr. Jimenez's regular rate of pay, thereby causing Mr. Jimenez to be underpaid all of his required overtime wages. Rather, Mr. Jimenez was paid an amount less than one and a half times (or two times in the case of double-time hours) his regular rate of pay, as Defendant failed to include the various forms of Incentive Pay earned during corresponding time periods that were required to be included in the regular rate of pay. As a result of Defendant's policies and/or practices that fail to compensate for all hours worked at the correct overtime rate and/or double overtime rate, Mr. Jimenez and other aggrieved employees were deprived all required overtime wages earned.

Meal Period Violations

As alleged above, Defendant failed to provide their aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As described above, due to the work demands imposed by Defendant, Mr. Jimenez either was not provided with a lunch, or was often prevented from taking meal periods that commenced before the end of the 5th hour of work and/or which were at least 30 minutes in length. For example, Mr. Jimenez's scheduled start time was 6:00 a.m., however, Defendant did not schedule Mr. Jimenez's meal period until 11:30 a.m., which resulted in late and/or otherwise unlawful meal periods. This policy and practice of Defendant not providing lawful meal periods to Mr. Jimenez and/or requiring Mr. Jimenez and other non-exempt employees to take a meal period after the end of the fifth hour of work violates California law. Additionally, on the occasions when Mr. Jimenez worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period due to Defendant's meal period policies and practices that fail to provide for a second meal period for shifts over 10.0 hours. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although the aggrieved employees were not provided with all legally-compliant meal periods to which

they were entitled, Defendant failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. Specifically, due to the work demands imposed by Defendant, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. As a result, Mr. Jimenez and the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Jimenez and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all overtime wages earned, meal and rest period premiums, total gross wages earned, and total net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Jimenez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime wages earned and meal and rest period premiums, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Jimenez and other aggrieved employees all of their final wages at the time of separation, which included, among other things, unpaid overtime wages, and meal and rest period premium wages.

As an "aggrieved employee," Mr. Jimenez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Jimenez's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Jimenez and other aggrieved employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Jimenez and the aggrieved employees;

- c) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Jimenez and the aggrieved employees;
- d) Defendant violated Labor Code § 226 by failing to furnish Mr. Jimenez and other aggrieved employees with accurate and compliant itemized wage statements;
- e) Defendant violated Labor Code §§ 204 and 210 by failing to pay Mr. Jimenez and other aggrieved employees all earned wages at least twice during each calendar month;
- f) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Jimenez and other aggrieved employees; and
- g) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Jimenez and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman