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Case #23CV421926
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ANDREW TREJO BACA , on behalf of
himself and all others similarly situated, and
the general public,

Plaintiff,

v.

AIRPORT APPLIANCE, INC., a California
corporation; AIRPORT HOME APPLIANCE,
a business entity of unknown form; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 23CV421926

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Indemnify (Lab. Code § 2802);
2. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
3. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff ANDREW TREJO BACA (“Plaintiff”), on behalf of himself, all others similarly
2 situated, the State of California, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants AIRPORT
5 APPLIANCE, INC., a California corporation; AIRPORT HOME APPLIANCE, a business entity of
6 unknown form; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”) for
7 alleged violations of the California Labor Code and California Business and Professions Code. As set
8 forth below, Plaintiff alleges that Defendants have:

- 9 a. failed to pay overtime wages at the correct rate;
- 10 b. failed to pay double time wages at the correct rate;
- 11 c. failed to pay overtime and/or double time wages by failing to include all
12 applicable remuneration in calculating the regular rate of pay;
- 13 d. failed to provide meal periods;
- 14 e. failed to provide rest periods;
- 15 f. failed to pay premium wages for missed meal and rest periods;
- 16 g. failed to provide accurate written wage statements;
- 17 h. failed to reimburse necessary business expenditures; and
- 18 i. failed to pay all final wages following separation of employment.

19 Based on these alleged Labor Code violations, Plaintiff now brings this class and
20 representative action to recover unreimbursed expenses, restitution, civil and statutory penalties, and
21 related relief on behalf of himself, all others similarly situated, and the general public.

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction to hear this case because the monetary
24 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
25 of the Superior Court of the State of California.

26 3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure
27 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
28 that are the subject matter of this Complaint occurred therein and/or each defendant is found,

1 maintains offices, transacts business and/or has an agent therein.

2 4. Venue is proper in Santa Clara County because Defendants' have at all times alleged
3 herein, conducted business in Santa Clara County, and throughout California. As such, venue is
4 proper in any county in California.

5 **PARTIES**

6 5. Plaintiff ANDREW TREJO BACA is, and at all relevant times mentioned herein, an
7 individual residing in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges that Defendant AIRPORT
9 APPLIANCE, INC., is, and at all relevant times mentioned herein, a California corporation doing
10 business in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges that Defendant AIRPORT
12 HOME APPLIANCE, is, and at all relevant times mentioned herein, a business entity of unknow
13 form, doing business in the State of California.

14 8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
15 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
16 will amend this Complaint to allege the true names and capacities of the DOE defendants when
17 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
18 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
19 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
20 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
21 defendants when ascertained.

22 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
23 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
24 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
25 or all of the other defendants, and in doing the things alleged herein, were acting within the course
26 and scope of such relationship and with the full knowledge, consent and ratification by such other
27 defendants.

28 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times

mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

11. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

12. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

- a. **Class Members:** All persons employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.
- b. **UCL Class:** All **Class Members** employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

13. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

14. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

15. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- a. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;
- b. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

16. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff

1 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
2 comply with the California Labor Code and Business and Professions Code as alleged in this
3 Complaint.

4 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
5 that she has no interests that are adverse to, or otherwise conflict with, the interests of absent class
6 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
7 and adequately represent and protect the interests of the other class members.

8 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
9 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
10 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
11 of Plaintiff and absent class members.

12 19. **Superiority:** A class action is vastly superior to other available means for fair and
13 efficient adjudication of the class members' claims and would be beneficial to the parties and the
14 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
15 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
16 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
17 due to many individual class members are likely to be relatively small and would thus make it difficult,
18 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class
19 action will serve an important public interest by permitting class members to effectively pursue the
20 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
21 or contradictory judgments inherent in individual litigation.

22 **GENERAL ALLEGATIONS**

23 20. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
24 statutory periods.

25 21. Defendants had a common policy and practice of systemically failing to reimburse
26 Class Members for necessary business expenses incurred in executing their duties under Defendants'
27 employ. Specifically, Plaintiff and Class Members were required to use cellular phones and cellular phone
28 service in executing their duties under Defendants' employ, including to use the mobile application

1 to clock in and out for work. Additionally, Class Members were required to purchase steel-toe boots,
2 as well as pay for the costs for maintaining their protective gear (including safety jackets and vests)
3 all necessary to perform, their duties under Defendants’ employ. Plaintiff and Class Members were
4 not reimbursed for these necessary work-related expenses.

5 22. Aggrieved Employees were employed by Defendants as non-exempt employees in
6 California within the statutory time period who suffer or suffered from the same wage and hour
7 violations outlined below. The Aggrieved Employees herein are defined as: all individuals employed
8 by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt
9 positions in California, at any time one (1) year prior to the submission of this letter (hereinafter,
10 “Aggrieved Employees”).¹

11 23. Defendants had a common policy and practice of systemically failing to pay Aggrieved
12 Employees proper wages and overtime for all hours worked, at the proper rates of pay. Aggrieved
13 Employees were consistently required to perform work, off-the-clock, for which they were not paid
14 wages. Specifically, Aggrieved Employees were required to work and keep and monitor their
15 company-issued radios during unpaid meal periods. The forgoing and uncompensated working time
16 was under the direction and control of Defendants, for which no wages were paid.

17 24. This uncompensated time caused Aggrieved Employees to work in excess of eight (8),
18 ten (10) and/or twelve(12) hours a day and/or forty (40) hours a week, entitling Aggrieved Employees
19 to minimum and overtime wages, which they were systemically denied.

20 25. Defendants had a common policy and practice of systemically denying Aggrieved
21 Employees the opportunity to take meal periods in compliance with the California Law. Specifically,
22 Aggrieved Employees’ periods were systemically interrupted by work duties, including having to
23 keep and monitor their company-issued radios during meal periods. As such Aggrieved Employees
24

25 ¹ Plaintiff was employed by Defendants, and suffered at least one of the Labor Code Violation alleged herein, (specifically
26 Labor Code Section 2802) making him “aggrieved” under the PAGA. AS such, Plaintiff hereby seeks penalties on behalf
27 of all Aggrieved Employees, for Defendants’ violations of the applicable provisions of the Labor Code, suffered by
28 Aggrieved Employees, but not directly suffered by Plaintiff, as alleged herein. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.)

1 were denied the opportunity to take duty-free, and uninterrupted, meal periods of at least 30 minutes,
2 in violation of California law.

3 26. Defendants had a common policy and practice of systemically denying Aggrieved
4 Employees the opportunity to take meal periods in compliance with the California Law. Aggrieved
5 Employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour
6 work period, or major fraction thereof, due to Defendants' policy of requiring Aggrieved Employees
7 to keep and monitor their company-issued radios during rest breaks.

8 27. Furthermore, Defendants failed to pay Aggrieved Employees premium pay wages at
9 their appropriate regular rates of pay for each meal and rest period denied.

10 28. Aggrieved Employees were not provided with accurate wage statements as mandated
11 by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage statements
12 as "a detachable part of the check, draft, or voucher paying the employee's wages, or separately if
13 wages are paid by personal check or cash, an accurate itemized statement in writing."

14 29. Additionally, the wage statements issued to Aggrieved Employees were not recorded
15 in "ink or other indelible form." Defendants failed to comply with Labor Code section 226(a)(1) as
16 "gross wages earned" were not accurately reflected in that: all hours worked, including overtime,
17 were not included.

18 30. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
19 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
20 not included.

21 31. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
22 were not accurately reflected in that: all hours worked, including overtime, were not included.

23 32. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at each
25 hourly rate by the employee" were not accurately reflected in that: all hours worked, including
26 overtime, were not included.

27 33. Furthermore, Defendants failed to provide Aggrieved Employees with paper pay stubs
28 as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Aggrieved

1 Employees' wage statement were only provided in electronic format in violation of Labor Code §
2 226.

3 34. Plaintiff and Aggrieved Employees were not reimbursed for business expenses
4 incurred in executing their duties under Defendant's employ. Specifically, Plaintiff and Aggrieved
5 Employees were required to cellular phones and cellular phone service in executing their duties under
6 Defendants' employ, including to use the mobile application to clock in and out for work.
7 Additionally, Plaintiff and Aggrieved Employees were required to purchase steel-toe boots, as well
8 as pay for the costs for maintaining their protective gear (including safety jackets and vests) all
9 necessary to perform, their duties under Defendants' employ. Plaintiff and Aggrieved Employees
10 were not reimbursed for these necessary work-related expenses.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO INDEMNIFY**

13 **(Lab. Code § 2802)**

14 **(Plaintiff and Class Members)**

15 35. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

17 36. Labor Code section 2802(a) states:

18 "An employer shall indemnify his or her employee for all necessary expenditures or
19 losses incurred by the employee in direct consequence of the discharge of his or her
20 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful."

21 37. Plaintiff and **Class Members** were not reimbursed for business expenses incurred in
22 executing their duties under Defendant's employ. Specifically, Plaintiff and **Class Members** were
23 required to cellular phones and cellular phone service in executing their duties under Defendants'
24 employ, including to use the mobile application to clock in and out for work. Additionally, **Class**
25 **Members** were required to purchase steel-toe boots, as well as pay for the costs for maintaining their
26 protective gear (including safety jackets and vests) all necessary to perform, their duties under
27 Defendants' employ. Plaintiff and **Class Members** were not reimbursed for these necessary work-
28 related expenses.

38. Accordingly, Plaintiff and **Class Members** are entitled to restitution for all unpaid amounts due and owing to within four years of the date of the filing of the Complaint and until the date of entry of judgment.

39. Plaintiff, on behalf of himself, and **Class Members**, seeks interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

SECOND CAUSE OF ACTION

UNFAIR COMPETITION

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

(Plaintiff and UCL Class)

40. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

41. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

42. Business and Professions Code section 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

43. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

44. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST CAUSE OF ACTION herein.

45. Plaintiff lost money or property as a result of the aforementioned unfair competition.

46. Defendants have or may have acquired money by means of unfair competition.

47. Plaintiff is informed and believes and thereupon alleges that by committing the Labor Code violations described in this Complaint, Defendants violated Labor Code section 2802.

48. Defendants have committed criminal conduct through their policies and practices of,

1 *inter alia*, failing to reimburse for necessary business expenditures.

2 49. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
3 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
4 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
5 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
6 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
7 similarly situated persons in a class action proceeding.

8 50. As a result of Defendants' violations of the Labor Code during the applicable
9 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
10 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

11 51. Plaintiff is informed and believes that other similarly situated persons have been
12 subject to the same unlawful policies or practices of Defendants.

13 52. Due to the unfair and unlawful business practices in violation of the Labor Code,
14 Defendants have gained a competitive advantage over other comparable companies doing business in
15 the State of California that comply with their legal obligations.

16 53. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
17 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
18 or is considered unlawful under any other state or federal law.

19 54. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
20 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
21 Defendants, and each of them, and their agents and employees, from further violations of the Labor
22 Code and applicable Wage Orders.

23 55. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
24 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
25 Defendants, and each of them, and their agents and employees, from further violations of the Labor
26 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
27 order permanently enjoining Defendants, and each of them, and their respective agents and
28 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission

1 Wage Orders.

2 56. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
3 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
4 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
5 and unfair business practices.

6 57. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
7 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
8 reasonable attorneys' fees in connection with their unfair competition claims.

9 58. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
10 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
11 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
12 and unfair business practices.

13 59. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
14 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
15 reasonable attorneys' fees in connection with their unfair competition claims.

16 **THIRD CAUSE OF ACTION**

17 **CIVIL PENALTIES**

18 **(Lab. Code §§ 2698 *et seq.*)**

19 60. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

20 61. At all relevant times, Plaintiff and the other Aggrieved Employees have been non-
21 exempt employees of Defendant entitled to the full meal period protections of both the Labor Code
22 and the applicable Industrial Welfare Commission Wage Order.

23 62. Labor Code § 512 and § 11 of the applicable Industrial Welfare Commission Wage
24 Order impose an affirmative obligation on employers to provide non-exempt employees with
25 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours,
26 and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each
27 work period of ten hours.

28 63. Labor Code § 226.7 and § 11 of the applicable Industrial Welfare Commission Wage

1 Order (“Wage Order”) both prohibit employers from requiring employees to work during required
2 meal periods and require employers to pay non-exempt employees an hour of premium wages on each
3 workday that the employee is not provided with the required meal period.

4 64. Compensation for missed meal periods constitutes wages within the meaning of Labor
5 Code § 200.

6 65. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate
7 the applicable Wage Order.

8 66. Section 11 of the applicable Wage Order states:

9 No employer shall employ any person for a work period of more than five (5)
10 hours without a meal period of not less than 30 minutes, except that when a
11 work period of not more than six (6) hours will complete the day’s work the
12 meal period may be waived by mutual consent of the employer and employee.
13 Unless the employee is relieved of all duty during a 30 minute meal period, the
14 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. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.

15 67. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
16 agreement. Plaintiff is informed and believes that, at all relevant times, the other Aggrieved
17 Employees were not subject to valid on-duty meal period agreements with Defendants.

18 68. Plaintiff alleges that, at all relevant times during the applicable limitations period,
19 Defendants maintained a policy or practice of not providing Plaintiff and the other Aggrieved
20 Employees with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
21 hour work period, as required by Labor Code § 512 ad the applicable Wage Order. Plaintiff and the
22 other Aggrieved Employees were required to perform work during their unpaid meal periods which
23 they were systemically denied.

24 69. Additionally, Defendants implemented a common policy and practice requiring
25 Plaintiff and the other Aggrieved Employees to perform work-related duties during unpaid meal
26 periods, which they were systemically denied. As such, Plaintiff and the other Aggrieved Employees
27 were denied uninterrupted meal periods, of at least 30 minutes, in violation of California Law.
28 Additionally, Plaintiff and the other Aggrieved Employees were not provided with the opportunity to

1 take their meal periods prior to the completion of their fifth hour work, nor were they allowed to leave
2 the premises during meal periods.

3 70. The other Aggrieved Employees were not provided with meal periods of at least thirty
4 (30) minutes for each five (5) hour work period due to: (1) Defendants' policy of not scheduling each
5 meal period as part of each work shift; (2) no formal written meal policy that encouraged employees
6 to take their meal periods, or that advised the other Aggrieved Employees of their meal and rest period
7 rights; and (3) Defendants' practice of requiring the other Aggrieved Employees to continue working
8 through their meal and rest periods due to the excessive workload.

9 71. Plaintiff alleges that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of failing to pay premium wages to the other Aggrieved
11 Employees when they worked five (5) hours without clocking out for any meal period.

12 72. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of not providing Plaintiff and the other Aggrieved
14 Employees with a second meal period when they worked shifts of ten or more hours and failed to pay
15 them premium wages as required by Labor Code 512 and the applicable Wage Order.

16 73. At all relevant times, Defendants failed to pay Plaintiff and the other Aggrieved
17 Employees additional premium wages, and/or were not paid premium wages at the employees'
18 regular rates of pay when required meal periods were not provided.

19 74. Section 12 of the applicable Wage Order imposes an affirmative obligation on
20 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
21 minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the
22 middle of each work period insofar as practicable.

23 75. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
24 from requiring employees to work during required rest periods and require employers to pay non-
25 exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday
26 that the employee is not provided with the required rest period(s).

27 76. Compensation for missed rest periods constitutes wages within the meaning of Labor
28 Code § 200.

1 77. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate
2 the Wage Order.

3 78. Plaintiff alleges that, at all relevant times during the applicable limitations period,
4 Defendants maintained a policy or practice of not providing Plaintiff and the other Aggrieved
5 Employees with net rest period of at least ten uninterrupted minutes for each four hour work period,
6 or major fraction thereof, as required by the applicable Wage Order.

7 79. Plaintiff and the other Aggrieved Employees were not provided with rest periods of at
8 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
9 Defendants' policy of not scheduling each rest period as part of each work shift, including second
10 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
11 encouraged employees to take their rest periods, or that properly advised Plaintiff and the other
12 Aggrieved Employees of their rest period rights; (3) Defendants' policy and practice of requiring
13 Plaintiff and the other Aggrieved Employees to continue working through their rest breaks due to the
14 excessive workload

15 80. At all relevant times, Defendants failed to pay Plaintiff and the other Aggrieved
16 Employees additional premium wages when required rest periods were not provided.

17 81. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
18 which an employee is subject to the control of the employer and includes all the time the employee is
19 suffered or permitted to work, whether or not required to do so."

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

23 83. Labor Code § 1194 invalidates any agreement between an employer and an employee
24 to work for less than the minimum or overtime wage required under the applicable Wage Order.

25 84. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages in
26 amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
27 underlying unpaid minimum wages and interest thereon.

28 85. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than

1 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
2 period.

3 86. Labor Code § 1197.1 provides that it is unlawful for any employer or any other person
4 acting either individually or as an officer, agent, or employee of another person, to pay an employee,
5 or cause an employee to be paid, less than the applicable minimum wage.

6 87. Labor Code § 1198 makes it unlawful for employers to employ employees under
7 conditions that violate the applicable Wage Order.

8 88. Labor Code § 204 requires employers to pay non-exempt employees their earned
9 wages for the normal work period at least twice during each calendar month on days the employer
10 designates in advance and to pay non-exempt employees their earned wages for labor performed in
11 excess of the normal work period by no later than the next regular payday.

12 89. Labor Code § 223 makes it unlawful for employers to pay their employees lower
13 wages than required by contract or statute while purporting to pay them legal wages.

14 90. Labor Code § 510 and § 3 of the applicable Wage Order require employees to pay
15 non-exempt employees overtime wages of no less than one and one-half times their respective regular
16 rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess
17 of forty hours in one workweek, and/or for the first eight hours worked on the seventh consecutive
18 day of one workweek.

19 91. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to pay
20 non-exempt employees overtime wages of no less than two times their respective regular rates of pay
21 for all hours worked in excess of twelve hours in one workday and for all hours worked in excess of
22 eight hours on a seventh consecutive workday during the workweek.

23 92. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
24 centrally devised policies and practices to her and the other Aggrieved Employees with respect to
25 working conditions and compensation arrangements.

26 93. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and the other
27 Aggrieved Employees for all time worked, including but not limited to, overtime hours at statutory
28 and/or agreed rates. Plaintiff and the other Aggrieved Employees were not paid proper wages and

overtime for all hours worked, at the proper rates of pay.

94. Defendants had a common policy and practice of systemically failing to pay Plaintiff and Aggrieved Employees wages and overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiff and Aggrieved Employees, and upon which their pay was based, and generally did so to the detriment of the Plaintiff and Aggrieved Employees, and these unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and Aggrieved Employees only for the hours they were scheduled to work, rather than the hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the detriment of the Plaintiff and Aggrieved Employees by systematically undercompensating them.

95. Plaintiff and the Aggrieved Employees were not paid all wages earned as Defendants directed, permitted, or otherwise encouraged Plaintiff and Aggrieved Employees to perform off-the-clock work.

96. Plaintiff and the Aggrieved Employees were regularly required to perform for pre-shift and post-shift duties, off the clock, for which no wages were paid. Specifically, Aggrieved Employees were required to work and keep and monitor their company-issued radios during unpaid meal periods. The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid.

97. As a result of performing off-the-clock work that was directed, permitted, or otherwise encouraged by Defendants, Plaintiff and the Aggrieved Employees should have been paid for this time. Instead, Defendants only paid Plaintiff and the Aggrieved Employees based on the time they were clocked in for their shifts and did not pay Plaintiff and the Aggrieved Employees for any of the time spent working off-the-clock.

98. Defendants knew or should have known that Plaintiff and the Aggrieved Employees were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the Aggrieved Employees for these hours.

1 99. Defendants implemented a common policy and practice requiring Plaintiff and the
2 other Aggrieved Employees to perform work-related duties during unpaid meal periods, which they
3 were systemically denied. Plaintiff and the other Aggrieved Employees were never paid wages for
4 these meal-period hours worked. As such, Plaintiff and the other Aggrieved Employees were not paid
5 proper wages and overtime for all hours worked, at the proper rates of pay. Plaintiff and the other
6 Aggrieved Employees were consistently required to work in excess of eight (8) hours a day and/or
7 forty (40) hours a week, entitling Plaintiff and the other Aggrieved Employees to overtime wages,
8 which they were systemically denied.

9 100. Labor Code § 226(a) states:

10 An employer, semimonthly or at the time of each payment of wages, shall
11 furnish to his or her employee, either as a detachable part of the check, draft,
12 or voucher paying the employee's wages, or separately if wages are paid by
13 personal check or cash, an accurate itemized statement in writing showing (1)
14 gross wages earned, (2) total hours worked by the employee, except as
15 provided in subdivision (j), (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
17 deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item, (5) net wages earned, (6)
19 the inclusive dates of the period for which the employee is paid, (7) the name
20 of the employee and only the last four digits of his or her social security number
21 or an employee identification number other than a social security number, (8)
22 the name and address of the legal entity that is the employer and, if the
23 employer is a farm labor contractor, as defined in subdivision (b) of Section
24 1682, the name and address of the legal entity that secured the services of the
25 employer, and (9) all applicable hourly rates in effect during the pay period
26 and the corresponding number of hours worked at each hourly rate by the
27 employee and, beginning July 1, 2013, if the employer is a temporary services
28 employer as defined in Section 201.3, the rate of pay and the total hours
worked for each temporary services assignment. The deductions made from
payment of wages shall be recorded in ink or other indelible form, properly
dated, showing the month, day, and year, and a copy of the statement and the
record of the deductions shall be kept on file by the employer for at least three
years at the place of employment or at a central location within the State of
California. For purposes of this subdivision, 'copy' includes a duplicate of the
itemized statement provided to an employee or a computer-generated record
that accurately shows all of the information required by this subdivision.

101. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the
"detachable part of the check" provision and the "accurate itemized statement in writing" provision
of Labor Code § 226(a) by allowing for electronic wage statements so long as each employee retains
the right to elect to receive a written paper stub or record and that those who are provided with
electronic wage statements retain the ability to easily access the information and convert the electronic

1 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006.)

2 102. Plaintiff is informed and believes that, at all relevant times during the applicable
3 limitations period, Defendants have failed to provide her and the other Aggrieved Employees with
4 written wage statements as described above. Additionally, the wage statements issued to Plaintiff and
5 the other Aggrieved Employees failed to account for the unpaid minimum wages, overtime, and
6 premium pay wages described above.

7 103. Additionally, the wage statements issued to Aggrieved Employees were not recorded
8 in “ink or other indelible form.” Defendants failed to comply with Labor Code section 226(a)(1) as
9 “gross wages earned” were not accurately reflected in that: all hours worked, including overtime,
10 were not included.

11 104. Aggrieved Employees were not provided with accurate wage statements as mandated
12 by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage statements
13 as “a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
14 wages are paid by personal check or cash, an accurate itemized statement in writing.”

15 105. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
16 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
17 not included.

18 106. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
19 were not accurately reflected in that: all hours worked, including overtime, were not included.

20 107. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
23 overtime, were not included.

24 108. Furthermore, Defendants failed to provide Aggrieved Employees with paper pay stubs
25 as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Aggrieved
26 Employees’ wage statement were only provided in electronic format in violation of Labor Code §
27 226.

28 109. Plaintiff is informed and believes that Defendants’ failure to provide her and the other

1 Aggrieved Employees with accurate written wage statements were intentional in that Defendants have
2 the ability to provide them with accurate wage statements but have intentionally provided them with
3 written wage statements that Defendants have known do not comply with Labor Code § 226(a).

4 110. Labor Code section 2802(a) states:

5 An employer shall indemnify his or her employee for all necessary expenditures or
6 losses incurred by the employee in direct consequence of the discharge of his or her
7 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful.

8 111. At all relevant times during the applicable limitations period, Plaintiff and the
9 Aggrieved Employees incurred necessary business-related expenses and costs. Specifically, Plaintiff
10 and Aggrieved Employees were required to cellular phones and cellular phone service in executing
11 their duties under Defendants' employ, including to use the mobile application to clock in and out
12 for work. Additionally, Plaintiff and Aggrieved Employees were required to purchase steel-toe
13 boots, as well as pay for the costs for maintaining their protective gear (including safety jackets and
14 vests) all necessary to perform, their duties under Defendants' employ. Plaintiff and Aggrieved
15 Employees were not reimbursed for these necessary work-related expenses.

16 112. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
17 by Defendants was insufficient to indemnify Plaintiff and Aggrieved Employees for all necessary
18 expenses incurred in the discharge of their duties.

19 113. At all relevant times during the applicable limitations period, Defendants required
20 Plaintiff and the Aggrieved Employees to pay for expenses and/or losses caused by Defendants'
21 want of ordinary care. Defendants failed to indemnify Plaintiff and Aggrieved Employees for all
22 such expenditures.

23 114. Plaintiff and the Aggrieved Employees incurred necessary business-related expenses
24 and costs, including but not limited to, the use of personal cell phones for work-related activities.
25 Defendants maintained a policy or practice of not reimbursing Plaintiff and the Aggrieved
26 Employees for all necessary business expenses.

27 115. At all relevant times, Plaintiff and the other Aggrieved Employees have been entitled,
28 upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid

1 before termination or resignation.

2 116. At all relevant times, pursuant to Labor Code § 201, employees who have been
3 discharged have been entitled to payment of all final wages immediately upon termination.

4 117. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
5 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of all
6 final wages at the time of resignation.

7 118. Plaintiff is informed and believes that, at all relevant times during the applicable
8 limitations period, Defendants have failed to timely pay the other Aggrieved Employees all of their
9 final wages in accordance with the Labor Code.

10 119. Plaintiff is informed and believes that, at all relevant times during the applicable
11 limitations period, Defendants have maintained a policy or practice of paying Plaintiff and the other
12 Aggrieved Employees their final wages without regard to the requirements of Labor Code §§ 201 or
13 202 by failing to timely pay them all final wages.

14 120. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
15 timely pay all final wages to her and the other Aggrieved Employees have been willful in that
16 Defendants have the ability to pay final wages in accordance with Labor Code §§ 201 and/or 202 but
17 have intentionally adopted policies or practices that are incompatible with those requirements.

18 121. In failing to pay Plaintiff and Aggrieved Employees wages, overtime, premium pay,
19 etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay
20 Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants
21 failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved
22 Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor
23 Code § 1174 and the applicable IWC wage orders.

24 122. During the applicable limitations period, Defendants have violated Labor Code §§
25 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12,

1 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.²

2 123. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself
3 and other current and former employees, to bring a representative civil action to recover civil penalties
4 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
5 maintained as a class action pursuant to Code of Civil Procedure section 382.

6 124. Plaintiff, a former employee against whom Defendants committed one or more of the
7 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
8 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
9 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
10 Defendants within the state of California from one year prior to the date of this letter and continuing
11 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
12 “Aggrieved Employees”)

13 125. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
14 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
15 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
16 investigate.

17 126. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
18 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 510,
19 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 20 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 1174, 1194, 1198 and
21 2802, one hundred dollars (\$100) for each employee per pay period for each
22 initial violation and two hundred dollars (\$200) for each employee per pay
23 period for each subsequent violation (penalties set by Labor Code §
24 2699(f)(2));

26 ² Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees,
27 for Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

- 1 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
2 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 3 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
4 employee for each initial violation that was neither willful nor intentional, two
5 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
6 withheld from each employee, for each initial violation that was either willful
7 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
8 five percent (25%) of the amount unlawfully withheld from each employee,
9 for each subsequent violation, regardless of whether the subsequent violation
10 was either willful or intentional (penalties set by Labor Code § 210);
- 11 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
12 employee for each initial violation that was neither willful nor intentional, two
13 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
14 the amount unlawfully withheld from each employee, for each initial violation
15 that was either willful or intentional, and two hundred dollars (\$200) for each
16 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
17 from each employee, for each subsequent violation, regardless of whether the
18 subsequent violation was either willful or intentional (penalties set by Labor
19 Code § 225.5);
- 20 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
21 citation, two hundred and fifty dollars (\$250) for each employee for each
22 violation. Alternatively, if an initial citation or its equivalent occurred before
23 the filing of this action, one thousand dollars (\$1,000) for each employee for
24 each violation (penalties set by Labor Code § 226.3);
- 25 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
26 employee for each initial pay period for which the employee was underpaid,
27 and one hundred dollars (\$100) for each employee for each subsequent pay
28 period for which the employee was underpaid (penalties set by Labor Code §

558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Actual damages;
- e. Unreimbursed expenses;
- f. Restitution;
- g. Declaratory relief;
- h. Pre-judgment interest;

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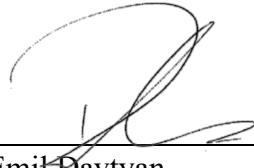
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- i. Statutory penalties;
- j. Civil Penalties;
- k. Costs of suit;
- l. Reasonable attorneys' fees; and
- m. Such other relief as the Court deems just and proper.

Dated: November 9, 2023

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
ANDREW TREJO BACA , and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: November 9, 2023

D.LAW, INC.



Emil Davtyan
David Yerejian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
ANDREW TREJO BACA , and the putative class

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

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[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Jordan Floyd