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 RUDY VALENZUELA

FILED
 Superior Court of California
 County of Los Angeles

01/02/2024

David W. Slayton, Executive Officer / Clerk of Court

By: V. Alcala Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF LOS ANGELES**

11 RUDY VALENZUELA, an individual,
 12 Plaintiff,

13 v.

14 MED ONE CAPITAL FUNDING, LLC, a Utah
 15 limited liability company; DILLON MORRIS,
 16 an individual; and DOES 1 through 20,
 inclusive,

17 Defendants.

Case No.: 23STCV29973

*Assigned to Honorable Judge Maureen Duffy-
 Lewis, Department 38*

**FIRST AMENDED COMPLAINT FOR
 DAMAGES FOR:**

1. **FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
2. **FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);**
3. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
4. **FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
5. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
6. **WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
7. **UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND,**
8. **PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §§ 2699, ET SEQ.)**

DEMAND OVER \$25,000
[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, RUDY VALENZUELA, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, RUDY VALENZUELA, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant MED ONE CAPITAL FUNDING, LLC (hereinafter referred to as "MED-ONE" and/or "EMPLOYER") was and is a Utah limited liability company doing business at 13955 Valley View Ave., La Miranda, in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employers owned and operated as a private medical equipment finance and rental provider.

5. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code §§12926, subdivision (d), 12940, subdivisions (a), (h), (1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare

Commission Order No. 7-2001 and are each any “employer or other person acting on behalf of an employer” as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant DILLON MORIS, is an individual resident of the County of Los Angeles, State of California, and are hereinafter referred to by last name or as the “INDIVIDUAL DEFENDANT.” The INDIVIDUAL DEFENDANT was Employers’ manager, corporate agent, supervisor, and/or employee.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged hereinafter.

9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint venture and with the permission and consent of each of the other Defendants.

10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANT, acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANT, and each of them, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged

1 herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff
2 harm.

3 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
4 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
5 and/or failures to act by each Defendant acting individually, jointly and severally.

6
7 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

8 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
9 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
10 defendants have ceased to exist.

11 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
12 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
13 but not limited to because:

14 a. Employers are completely dominated and controlled by one another and DOES 1-
15 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
16 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
17 accomplish some other wrongful or inequitable purpose.

18 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
19 through one another's unlawful conduct, and by using one another as the funding source for their own
20 personal expenditures.

21 c. Employers and DOES 1-20, while really one and the same, were segregated to
22 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
23 accomplishing some other wrongful or inequitable purpose.

24 d. Employers do not comply with all requisite corporate formalities to maintain a
25 legal and separate corporate existence.

26 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
27 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
28 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and

DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of Defendants would not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

14. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

FACTUAL ALLEGATIONS

17. On or about April 2020, Med One Capital Funding, LLC (known as "Employer" and/or "Defendant") hired Rudy Valenzuela ("Plaintiff") to work as a driver. Plaintiff was quickly promoted to lead driver on or about May 2020 and remained a lead driver until the terminated of his employment on

1 or about December 9, 2022. Plaintiff was a full-time, non-exempt employee, and performed all of
2 Plaintiff's job duties satisfactorily before Plaintiff's employment was terminated on December 9, 2022.

3 18. Plaintiff's job duties as a lead driver included scheduling Employer merchandise pickups
4 and deliveries; he was required to answer phones, check inventory, provide customer service and other
5 duties as assigned.

6 19. Plaintiff's work shifts varied. From April 2020 to May 2020, his regular shifts were
7 Monday – Friday from 8a.m. to 5:00 p.m. In or about May 2020 through November 2020, his shift
8 changed and his work hours were from 12:30 p.m. to 11:30 p.m. Throughout these time periods, he earned
9 \$21.00 per hour.

10 20. Beginning on November 2020 until his termination on December 9, 2022, Plaintiff's
11 regular work hours were Monday through Friday from 6:30 a.m. to 4:30 p.m. His hourly rate at this time
12 was \$26.75 per hour. His job title was lead driver. At this time, in addition to his regular working hours,
13 Plaintiff was also required to be "ON Call" to answer phones. He was required to work On Call every
14 Thursday evening from 5:30 p.m. to 10:00 p.m., and was given a flat rate fee of only \$15.00 for this time
15 period. During this ON-Call period he received between 10-15 calls and each call took about 15-20
16 minutes to complete. The calls required that he schedule deliveries, and pickups, verify inventory,
17 communicate with drivers and provide customer service. On-Call phone duty also required that he be at
18 the workplace and by a computer. Other than the \$15 flat rate, he was not provided with any wages for
19 this time worked.

20 21. Plaintiff also had to be On Call during the weekends. He was provided with a flat rate of
21 \$30 for each weekend day he was on call and was given \$60 if he worked both Saturday and Sunday. No
22 wages were paid to Plaintiff when he worked On Call on weekends. The weekend call service was a 24-
23 hour service, from 8:00 a.m. to 8:00 a.m. the following day. Plaintiff received between 10-30 calls each
24 weekend shift he worked, and other than the \$30 flat rate he received for each weekend day he worked;
25 he was paid no wages at all. Plaintiff was required to stay On Call for the entire 24-hour period each
26 weekend day he was required to work. Plaintiff was required to remain available while On Call and
27 answer calls because if he failed to answer a call, the call would be forwarded to the operational manager,
28

1 Dillon Morris, as well as to a representative from the regional office. If Plaintiff did not answer the calls
2 when he worked On Call, he would be reprimanded for being unavailable to answer the calls.

3 22. On December 9, 2022 Plaintiff received an email from Employer and was told by Dillon
4 Morris that Plaintiff was required to sign an arbitration agreement. Plaintiff refused to sign the arbitration
5 agreement and as a result, he was terminated that same day. He did not receive his final paycheck until
6 several days later.

7 23. Throughout his employment, Plaintiff was no allowed to take his rest breaks until his
8 deliveries were completed each day he worked (at least 5 days per week). As a result, he was not allowed
9 to take his breaks as required by law and was not paid an additional one hours pay in lieu thereof.
10 Throughout his employment, Plaintiff's was not allowed to take a full 30-minute lunch break without
11 interruptions each day he worked (at least 5 days per week). As a result, he was not allowed to take his
12 meal breaks as required by law and was not paid an additional one hours pay in lieu thereof.

13 24. Defendants' conduct described herein was undertaken, authorized, and/or ratified
14 Defendants' officers, directors and/or managing agents, including, but not limited to MORRIS and those
15 identified herein as DOES 1 through 20, who were authorized and empowered to make decisions that
16 reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and
17 individuals was therefore undertaken on behalf of Defendants who further had advanced knowledge of
18 the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
19 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are
20 therefore identified and designated herein as DOES 1 through 20, inclusive.

21 25. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
22 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
23 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
24 counseling and treatment, and past and future lost wages and benefits.

25 26. As a result of the above, Plaintiff is entitled to lost wages, bonuses, commissions, benefits
26 and loss or diminution of earning capacity.

27 27. Plaintiff claims general damages for emotional and mental distress and aggravation in a
28 sum in excess of the jurisdictional minimum of this Court.

FIRST CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 1182.12, 1194, 1194.2
AGAINST ALL DEFENDANTS

28. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

29. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11070, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

30. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11070, and Industrial Welfare Commission Order No. 7-2001.

31. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

32. Labor Code §558(a) provides that any person acting on behalf of an employer who violates, or causes to be violated, any statute or provision regulating hours and days of work in any order of the Industrial Welfare Commission pay a civil penalty in the amount of \$50.00 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

33. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated above based upon Defendants' underpayment of minimum and overtime wages. Within the one year immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code §558 on one pay period, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00 each subsequent violation.

SECOND CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2, 1197
AGAINST ALL DEFENDANTS

34. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

35. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum wage for every hour worked.

36. The historical minimum wage requirements in California are as follows:

Effective	26+ employees	1-25 employees
1/1/23	\$15.50	\$15.50
1/1/22	\$15.00	\$14.00
1/1/21	\$14.00	\$13.00
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00

Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

Effective	26+ employees	1-25 employees
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00

Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

37. The historical minimum wage requirements in California and City of Los Angeles pursuant to Ordinance No. 183612 are as follows:

Effective	26+ employees	1-25 employees
7/1/23	\$16.90	\$16.90
7/1/22	\$15.96	\$15.96
7/1/21	\$15.00	\$15.00
7/1/20	\$15.00	\$14.25
7/1/19	\$14.25	\$13.25
7/1/18	\$13.25	\$12.00
7/1/17	\$12.00	\$10.50
7/1/16	\$10.50	\$10.00

Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

Effective	26+ employees	1-25 employees
7/1/20	\$15.00	\$14.25
7/1/19	\$14.25	\$13.25
7/1/18	\$13.25	\$12.00
7/1/17	\$12.00	\$10.50
7/1/16	\$10.50	\$10.00

Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

38. At all relevant times, Employers employed 26 or more employees.

39. At all relevant times, Employers failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code §1182.12.

40. Defendants failed to pay Plaintiff the requisite minimum wage in each of the following ways in the four years immediately preceding the filing of this complaint:

a. From May 2020 to November 2020, Plaintiff worked approximately 15 hours per week without getting paid anything. Therefore, Plaintiff is owed \$8,190.00 calculated at 15 hours per week for 26 weeks, at \$21 per hour.

b. From November 2020 to December 9, 2022, Plaintiff worked approximately 73.5 hours per week without getting paid anything. Therefore, Plaintiff is owed \$216,273.75 calculated at 73.5 hours per week for 110 weeks, at \$26.75 per hour.

1 41. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
2 wages in the amount of \$224,463.75.

3 42. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is
4 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action
5 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
6 the straight time compensation paid and applicable minimum wage, including interest thereon.

7 43. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable
8 attorneys' fees and costs incurred by Plaintiff in this action.

9 44. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
10 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
11 additional \$224,463.75., plus interest thereon.

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13 **THIRD CAUSE OF ACTION**
14 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
15 **LABOR CODE §§510, 1194**
16 **AGAINST ALL DEFENDANTS**

17 45. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

19 46. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
20 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
21 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
22 hours in a single day. It also requires employers to pay their non-exempt employees overtime
23 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
24 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
25 consecutive day of work.

26 47. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
27 and/or more than 40 hours per workweek.

1 48. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
2 compensation required by Labor Code §510, 8 Code of Regulations §11070, and Industrial Welfare
3 Commission Order No. 7-2001.

4 49. In the four years last past, Plaintiff worked 88.5 hours of overtime each week, all of which
5 should have been paid at 1.5 times Plaintiff's regularly hour wage rate at that time. Defendants failed to
6 pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately
7 preceding the filing of this complaint:

8 a. From May 2020 to November 2020, Plaintiff's hourly overtime rate was \$31.50.
9 During this time period, Plaintiff worked an average of 15 hours of overtime each week, for 26 weeks, or
10 390 hours, but did not receive any wages for these hours at all. Therefore, less the minimum wage portion
11 of \$21 per hour which Plaintiff has already claimed in the preceding cause of action, Plaintiff is owed
12 \$10.50 for each of those hours, totaling \$4,095.00.

13 b. From November 2020 to December 9, 2022, Plaintiff's hourly overtime rate was
14 \$40.16. During this time period, Plaintiff worked an average of 73.5 hours of overtime each week, for
15 110 weeks, or 8,085 hours, but did not receive any wages for these hours at all. Therefore, less the
16 minimum wage portion of \$26.75 per hour which Plaintiff has already claimed in the preceding cause of
17 action, Plaintiff is owed \$13.41 for each of those hours, totaling \$108,419.85.

18 50. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
19 Code §510, 8 Code Regulations §11070, and Industrial Welfare Commission Order No. 7-2001.

20 51. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
21 of \$112,514.85, above and beyond the minimum wages sought in the preceding cause of action for these
22 same hours.

23 52. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
24 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
25 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL AND REST BREAKS
LABOR CODE §§226.7, 512
AGAINST ALL DEFENDANTS

53. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

54. Labor Code §512 requires employers to provide every employee with an uninterrupted meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

55. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion thereof.

56. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on each day of work.

57. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11070 and Industrial Welfare Commission Order No. 7-2001, as follows:

a. From May 2020 to November 2020, Plaintiff's statutory 30-minute meal periods were interrupted and cut short approximately 5 times per week for 26 weeks, or on approximately 130 days. During this same time period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on approximately 130 days (5 days per week for 26 weeks).

b. From November 2020 to December 9, 2022, Plaintiff's statutory 30-minute meal periods were interrupted and cut short approximately 5 times per week for 110 weeks, or on approximately 550 days. During this same time period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on approximately 550 days (5 days per week for 110 weeks).

58. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8 Code of Regulations §11070 and Industrial Welfare Commission Order No. 7-2001. Consequently,

1 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
2 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
3 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
4 that Plaintiff was denied such rest periods, calculated as follows:

5 a. From May 2020 to November 2020, Defendants failed to provide Plaintiff with an
6 uninterrupted statutory meal period on approximately 130 separate days. Consequently, Plaintiff is owed
7 one hour of pay at \$21.00 for each day, or \$2,730.00, plus interest thereon, for unpaid interrupted meal
8 periods. During this same time period, Defendants failed to provide Plaintiff with the statutory rest period
9 on approximately 130 separate days. Consequently, Plaintiff is owed one hour of pay at \$21.00 for each
10 day, or \$2,730.00, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a total of
11 \$5,460.00, plus interest thereon, for unpaid meal and rest periods for this time period.

12 b. From November 2020 to December 9, 2022, Defendants failed to provide Plaintiff
13 with an uninterrupted statutory meal period on approximately 550 separate days. Consequently, Plaintiff
14 is owed one hour of pay at \$26.75 for each day, or \$14,712.50, plus interest thereon, for unpaid interrupted
15 meal periods. During this same time period, Defendants failed to provide Plaintiff with the statutory rest
16 period on approximately 550 separate days. Consequently, Plaintiff is owed one hour of pay at \$26.75
17 for each day, or \$14,712.50, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a total
18 of \$29,425.00, plus interest thereon, for unpaid meal and rest periods for this time period.

19 59. Thus, the total missed meal and rest period compensation owing Plaintiff for this time
20 period is \$34,885.00.

21 60. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
22 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

23 61. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
24 such amounts in the combined amount of \$34,885.00, pursuant to Labor Code §226.7(b), plus interest
25 thereon and costs of suit.

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FIFTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST ALL DEFENDANTS

62. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

63. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

64. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

65. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none of the required information, including hours actually worked.

66. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

1 67. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
7 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
8 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

9 68. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
10 §226 approximately once during the one year preceding the filing of this complaint. Consequently,
11 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
12 amount of \$4,000.00, whichever is greater.

13 69. In addition thereto, for Defendant's one violation, Defendants are penalized \$250.00 for
14 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each subsequent
15 violations.

16 70. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
17 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
18 applicable provisions, as well as attorneys' fees and costs.

19
20 **SIXTH CAUSE OF ACTION**
21 **FOR WAITING TIME PENALTIES**
22 **LABOR CODE §§201-203**
23 **AGAINST ALL DEFENDANTS**

24 71. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
25 though set forth in full herein.

26 72. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
27 other compensation due immediately upon termination or within 72 hours of resignation, as required.
28 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest

1 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
2 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
3 203.

4 73. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
5 203.

6 74. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
7 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
8 more than \$6,420.00 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of
9 \$214.00, inclusive of overtime.

10 75. Based on Defendants' conduct as alleged herein, Defendants are liable for \$6,420.00 in
11 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
12 fees and costs.

13
14 **SEVENTH CAUSE OF ACTION**
15 **FOR UNFAIR COMPETITION**
16 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
17 **AGAINST ALL DEFENDANTS**

18 76. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
19 though set forth in full herein.

20 77. Defendants' violations of 8 Code of Regulations §11070, Industrial Welfare Commission
21 Order No. 7-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, and other
22 applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum
23 wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to
24 provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a
25 timely manner upon termination or resignation, and Defendants' failure to maintain complete and
26 accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business &
27 Professions Code §§17200, et seq.

28 ///

78. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

79. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

EIGHTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST ALL DEFENDANTS

80. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

81. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

82. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

83. On October 27, 2023, more than 63 calendar days before filing this First Amended Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, and 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

84. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

85. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved employee per pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

86. Plaintiff may also seek these penalties on behalf of himself/herself and these same penalties on behalf of all other aggrieved employees.

87. Plaintiff is also entitled to reasonable attorneys' fees and costs, and 25% of the recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 7-2001, in the amount of no less than \$224,463.75.; and for liquidated damages related thereto in the amount of no less than \$224,463.75;

3. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 7-2001, and 8 Code of Regulations §11070, in the amount of no less than \$112,514.85;

1 4. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
2 than \$50.00; and for liquidated damages related thereto in the amount of no less than \$50.00;

3 5. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
4 in the amount of no less than \$34,885.00;

5 6. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00; and
6 for statutory penalties pursuant to Labor Code §226.3 in the amount of no less than \$250;

7 7. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
8 than \$6,420.00;

9 8. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
10 \$600.00 on Plaintiff's own behalf, and similar amounts on behalf of all the Defendants' aggrieved
11 employees, estimated to exceed \$500,000;

12 9. For prejudgment interest on each of the foregoing at the legal rate from the date the
13 obligation became due through the date of judgment in this matter.

14 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
15 amount according to proof, as follows:

16 10. For injunctive relief barring Defendants' discriminatory employment policies and
17 practices in the future;

18 11. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
19 any other basis;

20 12. For post-judgment interest; and

21 13. For any other relief that is just and proper.

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1 DATED: December 27, 2023

DOWNTOWN L.A. LAW GROUP, LLP

2 By: *Stephen J. Duron*

3 Liliuokalani Martin, Esq.
4 Stephen J. Duron, Esq.
5 Attorneys for Plaintiff
6 RUDY VALENZUELA

7 **JURY TRIAL DEMANDED**

8 Plaintiff demands trial of all issues by jury.

9 DATED: December 27, 2023

DOWNTOWN L.A. LAW GROUP, LLP

10 By: *Stephen J. Duron*

11 Liliuokalani Martin, Esq.
12 Stephen J. Duron, Esq.
13 Attorneys for Plaintiff
14 RUDY VALENZUELA