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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 11/16/2023 10:42 AM
By: Agnes Nazarian, Deputy

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LEONARDO ORTEGA on behalf of himself
and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

LEONARDO ORTEGA, on behalf of
himself and all similarly aggrieved
employees,

Plaintiff,

v.

BALESTERI CONSTRUCTION, INC.; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV003755

CLASS ACTION

**COMPLAINT FOR DAMAGES,
PENALTIES AND FOR INJUNCTIVE
RELIEF**

Plaintiff Leonardo Ortega, who on behalf of himself and all other similarly situated
current and former employees, and members of the public, complain and allege as follows:

1. As used herein, the term “Plaintiff” includes Leonardo Ortega, who is the named
Plaintiff and Class Representative herein.

2. Plaintiff and the Class Members alleged herein (collectively, “Class Members”)
seek remedies for all compensation and penalties due to the Class Members during the “Class
Period,” which is defined as four years from the filing date, through the date on which final
judgment is entered, based upon information and belief that Defendants are continuing and
will continue the unlawful employment practices as described herein.

3. Each Class Member is an identifiable, similarly-situated person who is now, or
was during the Class Period, employed by Defendants as an administrative/office employee.
Plaintiff reserves the right to seek additional amendments of this Complaint to add as a named
Plaintiff some or all of the persons who are members of the Class.

1 4. Plaintiff Leonardo Ortega (“Plaintiff”) is a competent adult who is, and at all
2 times mentioned in this complaint has been, a resident of Monterey County, California.
3 Plaintiff was employed by Defendants from approximately February 2023, through
4 approximately June 30, 2023, pursuant to an unwritten contract, some of the terms of which
5 were the product of an oral agreement, with other terms implied from or incorporated from
6 written materials and policies maintained by Defendants and from the conduct of the parties.
7 The terms of this contract included working as a non-exempt employee, and at all times as an
8 employee not exempted from the California Labor Code. Plaintiff is, and at all relevant times
9 was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

10 5. Defendant BALESTERI CONSTRUCTION, INC., (“BALESTERI”) is, and at
11 all times mentioned in this complaint has been, a corporation incorporated under the laws of
12 the State of California and registered to do business in the State of California. Plaintiff is
13 informed and believes and thereon alleges that BALESTERI is authorized to and does conduct
14 business throughout the State of California, and has purposefully availed itself of the
15 privileges and benefits of doing business in the State of California.

16 6. Plaintiff and the Class Members are ignorant of the true names, identities,
17 capacities and relationships of the Defendants sued herein as DOES 1 through 50, inclusive,
18 and therefore sues these Defendants by such fictitious names. Plaintiff and the Class Members
19 are informed and believe, and thereon allege, that each of these fictitiously named Defendants
20 are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s and the
21 Class Members’ damages as herein alleged were proximately caused by DOES 1 through 50.
22 Plaintiff and the Class Members will amend this Complaint to allege the true names and
23 capacities of said DOE Defendants when such information is ascertained. Each reference to
24 “Defendants,” and each reference to any particular Defendant herein, shall be construed to
25 refer to all Defendants, including, but not limited to, all of those fictitiously named herein as a
26 “DOE” Defendant, and each of them.

27 7. Plaintiff and the Class Members are informed and believe, and thereon allege,
28 that each of the Defendants herein was at all times relevant to this action the agent, employee,

1 representative, partner, and/or joint venturer of the remaining Defendants, and each of them,
2 and that each of the Defendants herein was at all times acting within the course and scope of
3 that relationship. Plaintiff and the Class Members are further informed and believe, and
4 thereon allege, that each of the Defendants herein consented to, ratified, and/or authorized the
5 acts of each of the remaining Defendants herein. The conduct of each of the Defendants was
6 at all times herein in accordance with and represents the official policy of Defendants.

7 Additionally, at all times herein mentioned, Defendants, and each of them, aided and abetted
8 the acts and omissions of each and all of the other Defendants, which proximately caused the
9 damages herein alleged. Plaintiff and the Class Members are further informed and believe,
10 and thereon allege, that all of the Defendants jointly employed the Plaintiff and Class
11 Members herein and/or carried out a joint scheme, business plan and/or uniform policy, and
12 the acts and omissions of each Defendant are legally attributable to the other Defendants such
13 that they are deemed a single integrated enterprise and agents of one another so that all
14 Defendants are each jointly and severally liable for the acts and omissions hereinafter alleged.

15 8. Defendants BALESTERI and DOES 1 through 50 (collectively referred to
16 herein as “Defendants”) are, and at all times herein were, “persons” as defined in California
17 Business and Professions Code § 17201.

18 9. At all times herein, Defendants directly or indirectly, or through an agent or
19 representative, exercised control over the wages, hours and/or working conditions of the
20 Plaintiff and the Class Members, and directly or indirectly or through an agent or other person
21 engaged, suffered, or permitted Plaintiff and the Class Members to work.

22 **JURISDICTION AND VENUE**

23 10. Plaintiff brings this Complaint for violations of California law occurring in this
24 County, including without limitation violations of the California Labor Code, Business and
25 Professions Code, Civil Code and common law, and the amount in controversy exceeds the
26 minimum jurisdictional amount of the Superior Court. Based on information and belief,
27 Defendants have intentionally availed themselves of the benefits and privileges available
28 within this State, economic or otherwise, so as to render the exercise of jurisdiction over them

1 by the courts of the State of California consistent with traditional notations of fair play and
2 substantial justice. Accordingly, this Court has jurisdiction over the parties and claims in this
3 matter.

4 11. Pursuant to Code of Civil Procedure § 395(a), venue is proper in this judicial
5 district because Defendants now, and at all times relevant herein, reside and/or transact business
6 in this County. The conduct alleged herein and the damages resulting therefrom occurred in
7 this County, and at all times herein Defendants maintained their principal place of business in
8 this County.

9 **GENERAL ALLEGATIONS**

10 12. Defendants now, and at all times relevant herein, did, own, operate and control a
11 business/establishment that employ persons within the meaning of all applicable wage orders,
12 including, but not limited to, IWC Wage Order No. 16-2001 (California Code of Regulations,
13 title 8, section 11160).

14 13. At all times relevant herein, Plaintiff and the Class Members were non-exempt
15 employees of Defendants under the California Labor Code and were protected by the
16 provisions of the Wage Order.

17 14. At all times relevant herein, Plaintiff and the Class Members worked for
18 Defendants without the provision of being compensated for all hours worked, without being
19 paid overtime premium wages for all overtime hours worked, without being paid all wages on
20 time, working without meal or rest breaks as required by law, without being compensated for
21 missed meal and rest breaks, without being paid the full payment of wages owed at the end of
22 their employment, without being reimbursed for work-related expenses, and without having
23 been provided with complete and accurate wage statements as required by law.

24 15. At all times relevant herein, Defendants maintained and enforced a uniform
25 policy by which they regularly and consistently failed to pay Plaintiff and the Class Members
26 their final wages on the last date of their employment.

27 16. At all times relevant herein, Defendants maintained and enforced a uniform
28 policy of requiring Plaintiff and the Class Members to work shifts of five hours or more within

1 a single workday without providing a thirty (30) minute uninterrupted duty-free meal period
2 within five (5) hours of the beginning of their shift. Defendants also failed to pay Plaintiff and
3 the Class Members one hour of pay at their regular rate of compensation as required by
4 California Labor Code § 226.7 and the Wage Order for each meal period that was not
5 provided.

6 17. Likewise, at all times relevant herein, Defendants maintained and enforced a
7 uniform policy by which they repeatedly failed to authorize, permit and provide Plaintiff and
8 the Class Members with paid duty-free rest periods of at least ten (10) consecutive
9 uninterrupted minutes during which Plaintiff and the Class Members were relieved of all
10 duties for every four (4) hours worked or major fraction thereof and which were counted as
11 hours worked for which there would be no deduction from wages, and failed to compensate
12 Plaintiff and the Class Members one (1) hour of wages at their regular rate of compensation as
13 required by California Labor Code § 226.7 and the Wage Order for each rest period not
14 provided.

15 18. At all times relevant herein, Defendants maintained and enforced a uniform
16 policy by which they regularly and consistently failed to pay Plaintiff and the Class Members
17 overtime premium wages of one and one-half times their regular rate of pay for all overtime
18 hours worked in a single workday and/or a single workweek, as required by California Labor
19 Code §§ 510 and 1194 and the Wage Order.

20 19. At all times relevant herein, Defendants maintained and enforced a policy of not
21 paying Plaintiff and the Class Members for all hours worked, including all overtime wages.
22 Defendants regularly used a system of time rounding in a manner that resulted, over a period
23 of time, in failing to compensate Plaintiff and the Class Members properly for all the time they
24 have actually worked, even though the realities of Defendants' operations are such that it is
25 possible, practical, and feasible to count and pay for work time to the minute. As a result,
26 Defendants frequently paid Plaintiff and the Class Members less than all their work time, some
27 of which should have been paid at the overtime rate. Consequently, Plaintiff and the Class
28 Members were forced to work without being paid at minimum and overtime wage as required

1 by as required by California Labor Code §§ 510 and 1197 and the applicable Industrial
2 Welfare Commission Wage Order.

3 20. At all times relevant herein, Defendants maintained and enforced a uniform
4 policy by which they regularly and consistently violated Labor Code § 2802 by failing to
5 reimburse employees for all business expenses, including phone-related expenses incurred in
6 connection with mandatory work-related phone calls.

7 21. At all times relevant herein, Defendants maintained and enforced a uniform
8 policy by which they regularly and consistently failed to provide Plaintiff and the Class
9 Members with complete and accurate itemized wage statements stating the total hours worked,
10 regular and overtime hours worked, gross wages earned, net wages earned, all applicable rates
11 of pay and the corresponding number of hours worked under each rate, all deductions, wages
12 owed for missed rest and meal periods, and accurate accounting for all wages paid to Plaintiff
13 and the Class Members.

14 22. At all times relevant herein, Defendants maintained and enforced a uniform
15 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
16 204, 216, 218, 221, 223, 1194, 1198 and the Wage Order by unlawfully refusing to pay wages
17 to Plaintiff and the Class Members.

18 23. At all times relevant herein, Defendants maintained and enforced a uniform
19 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
20 and 203 by failing to pay Plaintiff and the Class Members all owing and unpaid wages for
21 work performed by them during their employment and at the end of their employment.

22 24. At all times relevant herein, Defendants maintained and enforced a uniform
23 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
24 204, 218, 1194, 1198, 1199 and the Wage Order by failing to pay Plaintiff and the Class
25 Members for all hours worked, overtime premium wages for all overtime hours worked, and
26 compensation for missed meal and rest periods.

27 25. Plaintiff and the Class Members are informed and believe, and thereon allege,
28 that at all times herein mentioned, Defendants were advised by skilled lawyers and other

1 professionals, employees, and advisors knowledgeable about California labor and wage law,
2 employment and personnel practices, and about the requirements of California law. Plaintiff
3 and the Class Members are informed and believe, and thereon allege, that at all times relevant
4 herein, Defendants knew or should have known that they had a duty to compensate Plaintiff
5 and the Class Members and that Defendants had the financial ability to pay such
6 compensation, but willfully, knowingly and intentionally failed to do so, and falsely
7 represented to Plaintiff and the Class Members that they were properly denied wages, all in
8 order to increase Defendants' profits.

9 26. California Labor Code § 218 states that nothing in Article I of the Labor Code
10 shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to
11 him under this Article.”

12 **CLASS ACTION ALLEGATIONS**

13 27. Plaintiff brings this action on behalf of himself, the general public, and all other
14 similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. All
15 claims alleged herein arise under California law for which Plaintiff seeks relief authorized by
16 California law. Plaintiff seeks to represent a class composed of and defined as follows:

17 A. Class:

18 All current and former non-exempt employees of
19 Defendants who worked for Defendants in
California at any time within four (4) years before
the commencement of this action through the date
on which final judgment is entered.

20 28. Plaintiff reserves the right under Code of Civil Procedure § 382 to amend or
21 modify the class description with greater specificity, further division into subclasses or with
22 limitations to particular issues.

23 29. This action has been brought and may be properly maintained as a class action
24 under the provisions of Code of Civil Procedure § 382 because the questions of law and fact at
25 issue herein are common and of general interest to Plaintiff and the Class Members, the parties
26 are numerous, and it would be impracticable to bring the claims alleged herein before the court
27 as individual claims or through some other than a class action.
28

1 **A. Numerosity**

2 30. The Class Members are so numerous that joinder of all the members of the class
3 is not feasible and not practical. While the precise number the Class Members has not been
4 determined at this time, Plaintiff is informed and believes that Defendants currently employ,
5 and during the Class Period regularly employed, more than 50 employees in California in
6 hourly wage or otherwise non-exempt positions. The identities of the Class Members are
7 readily ascertainable by inspection of Defendants' employment records. Moreover, the joinder
8 of all members of the proposed class is not practicable, and individual damages for each
9 member are not anticipated to be sufficiently high to allow for practical resolution through
10 individualized litigation.

11 **B. Commonality and Predominance**

12 31. There are questions of law and fact common to each Class Member that
13 predominates over any questions affecting only individual Class Members. These common
14 questions of law and fact include, without limitation:

15 a. Whether Defendants violated California Labor Code §§ 226.7 and 512
16 and the Wage Order by failing to provide a 30 minute duty-free meal period within the first
17 five hours of each workday to Plaintiff and the Class Members on days they worked in excess
18 of five hours, and failing to compensate Plaintiff and the Class Members one hour of wages at
19 their regular rate of pay for each such missed meal period that was not provided;

20 b. Whether Defendants violated Labor Code § 226.7 and the Wage Order
21 by failing to provide a paid 10 minute duty-free rest period to Plaintiff and the Class Members
22 for every four-hour work period or major fraction thereof, by either not paying wages to
23 Plaintiff and the Class Members or reducing their wages for time spent during any rest period
24 that was provided, and by failing to compensate Plaintiff and the Class Members one hour of
25 wages for such missed and/or unpaid/underpaid rest periods;

26 c. Whether Defendants violated Labor Code §§ 1194 and 1198 and the
27 Wage Order by failing to pay Plaintiff and the Class Members the appropriate premium
28 overtime wages for all overtime hours worked;

1 d. Whether Defendants violated California Labor Code § 226 by failing to
2 provide accurate itemized wage statements to Plaintiff and the Class Members containing all
3 of the information required by Labor Code § 226;

4 e. Whether Defendants violated California Labor Code §§ 201, 202, 204,
5 216, 218, 221, 1194, and 1198 by failing and refusing to pay Plaintiff and the Class Members
6 agreed wages for all work performed by them, including minimum wage and/or overtime as
7 compensation for any and all hours worked;

8 f. Whether Defendants violated Labor Code §§ 201, 202, 203, and 204 by
9 failing to timely pay Plaintiff and the Class Members all wages for work performed by them
10 during their employment and failing to timely pay Plaintiff and the Class Members at the end
11 of their employment all wages for work performed by them during their employment;

12 g. Whether Defendants violated Labor Code §§ 201, 202, and 204 by
13 failing to timely pay Plaintiff and the Class Members for all wages and hours worked during
14 their employment;

15 h. Whether Defendants violated Labor Code § 2802 by failing to reimburse
16 employees for all business expenses, including phone-related expenses incurred in connection
17 with mandatory work-related phone calls;

18 i. Whether Defendants' failure to pay wages, and premiums in accordance
19 with the California Labor Code and the Wage Order was willful;

20 j. Whether Defendants violated Labor Code § 1198 and the Wage Order for
21 failing to keep accurate records with respect to each employee;

22 k. Whether Defendants' conduct as alleged throughout this complaint was
23 willful or reckless;

24 l. The appropriate amount of damages, restitution and/or monetary
25 penalties resulting from Defendants' violations of California law;

26 m. Whether Plaintiff and the Class members are entitled to equitable relief,
27 including but not limited to, injunctive and declaratory relief, pursuant to Business and
28 Professions Code §§ 17200 et seq.; and

1 n. Whether Defendants violated Business and Professions Code §§ 17200 et
2 seq., by failing to provide meal and rest periods; by failing to compensate for meal and rest
3 periods not provided; by failing to pay regular and overtime wages for all hours worked; by
4 failing to provide complete and accurate wage statements; by failing to pay agreed wages; by
5 failing to pay all wages due upon termination; and by failing to timely provide all wages due.

6 **C. Typicality**

7 32. The claims of Plaintiff are typical of the claims of the Class Members. Plaintiff
8 and the Class Members sustained injuries and damages arising out of and caused by the
9 Defendants' common course of conduct in violation of statutes, common law, wage orders
10 and/or regulations that have the force and effect of law, as alleged herein. Plaintiff has a well-
11 defined community of interest with the Class Members and are qualified to, and will, fairly
12 and adequately protect the interests of each Class Member.

13 **D. Adequacy of Representation**

14 33. Plaintiff will fairly and adequately represent and protect the interests of the Class
15 Members. Plaintiff acknowledges Plaintiff's obligation to make known to the Court any
16 relationship, conflict, or difference with any Class Member. Plaintiff has incurred and
17 throughout this action will continue to incur, costs and attorney's fees necessarily expended
18 for the prosecution of this action for the substantial benefit of each Class Members. Counsel
19 who represents Plaintiff is competent and experienced in litigating class actions, versed in the
20 rules governing class action discovery certification, settlement and trial, and will vigorously
21 and competently pursue the claims of Plaintiff and the Class Members.

22 **E. Superiority**

23 34. The nature of this action makes the use of class action adjudication superior to
24 other methods. The class action will achieve economies of time, effort, and expense as
25 compared with separate individual lawsuits on behalf of each Class Member, and will avoid
26 inconsistent outcomes because the same issues will be adjudicated in the same manner and at
27 the same time for the entire class.

28 **F. Public Policy Consideration**

 35. Employers in the State of California violate employment and labor laws daily.

1 Employees are often intimidated and afraid to assert their rights out of fear that they will be
2 subjected to direct or indirect retaliation by their employers. Former employees (those who
3 are no longer employed by a particular employer who had subjected them to employment and
4 labor law violations) are fearful of bringing actions against their former employers because
5 they believe their former employers might damage their future endeavors through negative
6 references and/or other means. Class actions provide Class Members who are not named in
7 the complaint with vindication of their rights while also protecting their privacy and shielding
8 them from retaliation.

FIRST CAUSE OF ACTION

**Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and the Wage Order)
(Plaintiff and the Class Members against Defendants)**

11 36. Plaintiff and the Class Members allege and incorporate by reference all of the
12 allegations contained in the preceding paragraphs as though fully set forth herein.

13 37. California Labor Code § 226.7 provides that no employer shall require an
14 employee to work during any meal period mandated by an applicable order of the Industrial
15 Welfare Commission. Labor Code § 226.7 further provides that if an employer fails to
16 provide an employee a meal period or rest period in accordance with an applicable order of the
17 Industrial Welfare Commission, the employer shall pay the employee one additional hour of
18 pay at the employee's regular rate of compensation for each workday that the meal or rest
19 period is not provided.

20 38. At all times relevant to this action, the Wage Order and California Labor Code §
21 1198 provided that an employer may not require, cause or permit an employee to work for a
22 period of more than five (5) hours per day without providing the employee with an
23 uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
24 period per day of the employee is not more than six (6) hours, the meal period may be waived
25 by mutual consent of both the employer and the employee.

26 39. Throughout the Class Period, Defendants and/or their authorized supervisors
27 repeatedly failed to comply with the meal period requirements of the Labor Code and the
28 Wage Order by failing to provide Plaintiff and the Class Members with a thirty (30) minute

1 uninterrupted duty-free meal period within five (5) hours of the beginning of their shift, in
2 violation of Labor Code §§ 512, 226.7, and the Wage Order. Defendants also failed to
3 compensate Plaintiff and the Class Members one (1) hour of wages for any of the missed meal
4 periods not provided by Defendants, as alleged above, which failure also violated Labor Code
5 §§512 and 226.7 and the Wage Order.

6 40. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff and
7 the Class Members are entitled to recover from Defendants one (1) additional hour of pay at
8 their regular hourly rate of compensation for each meal period violation as alleged herein.

9 41. Defendants were at all times aware of the Labor Code and Wage Order
10 requirements that they provide Plaintiff and the Class Members with such meal periods and
11 was aware that Plaintiff and the Class Members regularly worked more than five (5) hours in a
12 shift without receiving mandated meal periods. Thus, Defendants willfully violated the
13 provisions of Labor Code §§ 226.7 and 512 and the Wage Order.

14 42. As a result of the unlawful conduct of Defendants, Plaintiff and the Class
15 Members have been deprived of wages and other compensation in amounts to be determined at
16 trial, and are entitled to recovery of such amounts.

17 43. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
18 for.

19 **SECOND CAUSE OF ACTION**
20 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
21 **(Labor Code §§ 226.7 and 1198; and The Wage Order)**
22 **(Plaintiff and the Class Members against Defendants)**

23 44. Plaintiff and the Class Members allege and incorporate by reference all of the
24 allegations contained in the preceding paragraphs as though fully set forth herein.

25 45. California Labor Code § 226.7 provides that no employer shall require an
26 employee to work during any rest period mandated by an applicable order of the California
27 Industrial Welfare Commission. Labor Code Section 226.7 further provides that if an
28 employer fails to provide an employee a meal period or rest period in accordance with an
applicable order of the Industrial Welfare Commission, the employer shall pay the employee
one additional hour of pay at the employee's regular rate of compensation for each workday

1 that the meal or rest period is not provided.

2 46. The Wage Order and California Labor Code § 226.7 provides that every
3 employer shall provide and shall authorize and permit all employees to take rest periods,
4 which insofar as practicable shall be in the middle of each work period, and that the rest period
5 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
6 per four (4) hours or major fraction thereof, unless the total daily work time is less than three
7 and one-half hours.

8 47. Throughout the Class period, on days in which Plaintiff and the Class Members
9 worked at least three and one half hours, Defendants regularly and repeatedly required
10 Plaintiff and the Class Members to work four (4) hours and/or a major fraction thereof without
11 providing, authorizing or permitting at least one ten (10) minute rest period during which
12 Plaintiff's and the Class Members were relieved of all duties (hereafter "rest period") per each
13 four (4) hour period, or a major fraction thereof, worked.

14 48. Throughout the Class Period, Defendants failed to pay Plaintiff and the Class
15 Members a premium of one hour pay at their regular rate of pay for each rest period not
16 provided, authorized, and permitted as alleged herein, pursuant to Labor Code § 226.7.

17 49. Defendants were at all times aware of the Labor Code and Wage Order
18 requirements that they provide Plaintiff and the Class Members with the rest periods described
19 above and were aware that Plaintiff and the Class Members regularly worked more than four
20 (4) hours or major fraction thereof without receiving mandated rest periods. Defendants
21 therefore at all times willfully violated the provisions of Labor Code § 226.7 and the Wage
22 Order.

23 50. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff and
24 the Class Members are entitled to recover from Defendants one (1) additional hour of pay at
25 their regular hourly rate of compensation for each workday that a rest period was not provided.
26 As a result of the unlawful conduct of Defendant, Plaintiff have been deprived of wages and
27 compensation in amounts to be determined at trial, and are entitled to recovery of such
28 amounts.

1 51. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
2 for.

3 **THIRD CAUSE OF ACTION**
4 **Failure to Pay Hourly and Overtime Wages**
5 **(California Labor Code §§ 1194 and 1198; and The Wage Order)**
6 **(Plaintiff and the Class Members against Defendants)**

7 52. Plaintiff and the Class Members incorporate by reference all of the allegations
8 contained in the preceding paragraphs as though fully set forth herein.

9 53. Plaintiff and the Class Members base this cause of action upon Defendants'
10 willful and intentional violations of the California Labor Code and Industrial Welfare
11 Commission requirements that Defendants pay Plaintiff and the Class Members for all hours
12 worked, including the requirement to pay premium overtime wages to Plaintiff and the Class
13 Members for overtime hours worked in a workday and/or in a workweek, and/or on the
14 seventh consecutive day in a workweek.

15 54. Pursuant to Labor Code § 204, as well as other applicable laws and regulations,
16 and public policy, an employer must timely pay its employees for all hours worked.

17 55. Labor Code § 1198 provides that "The maximum hours of work and the standard
18 conditions of labor fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees. The employment of any employee for longer hours
20 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

21 56. Labor Code § 1194 provides that "any employee receiving less than the legal
22 minimum wage or the legal overtime compensation applicable to the employee is entitled to
23 recover in a civil action the unpaid balance of the full amount of this minimum wage or
24 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
25 suit."

26 57. Throughout the Class Period, Defendants knew or had reason to know that
27 Plaintiff and the Class Members were regularly and consistently worked overtime without
28 being paid the appropriate premium overtime wage required by Labor Code §§ 1194 and 1198,
and the Wage Order.

58. Throughout the Class Period, Defendants' conduct as alleged herein amounted to

1 a uniform pattern of unlawful wage and hour practices which resulted from the
2 implementation of uniform policies and practices by which Defendants failed to accurately
3 record all hours worked by Plaintiff and the Class Members thereby denying payment of
4 overtime premium wages to Plaintiff and the Class Members for overtime hours worked.

5 59. In committing the violations of the California Labor Code as alleged herein,
6 Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 60. As a direct result of Defendants' unlawful wage practices as alleged herein,
10 Plaintiff and the Class Members have been denied full compensation for all hours worked by
11 them, including but not limited to premium overtime wages for overtime hours.

12 61. The Labor Code and the Wage order set forth various exemptions by which
13 certain categories of employees are exempt from the protections of the overtime laws
14 contained in the Labor Code. At no time during Plaintiff's employment did any of these
15 exemptions apply to Plaintiff and the Class Members. Moreover, at no time were Plaintiff and
16 the Class Members subject to a valid collective bargaining agreement that would preclude the
17 causes of action set forth in this complaint. Rather, Plaintiff and the Class Members bring this
18 action because of Defendants' violations of non-waivable rights guaranteed to them by the
19 State of California.

20 62. As a direct consequence of Defendants' unlawful failure to pay Plaintiff and the
21 Class Members the full and accurate amount of all earned wages at the appropriate rate for the
22 true number of hours they worked, Plaintiff and the Class Members have suffered and will
23 continue to suffer economic injuries in an amount which is presently unknown to them and
24 which will be ascertained according to proof at trial.

25 63. In performing the acts and practices in violation of California labor laws as
26 herein alleged, Defendants have acted and continue to act intentionally, oppressively and
27 maliciously towards Plaintiff and the Class Members, with a conscious disregard for their legal
28 rights and the consequences to them, and with the intent of depriving them of their property

1 and legal rights and otherwise causing them injury, in order to increase Defendants' profits at
2 the expense of Plaintiff and the Class Members.

3 64. Plaintiff and the Class Members request recovery of all unpaid wages, including
4 overtime premium wages, in an amount according to proof, interest on such amounts, statutory
5 costs, and the assessment of any and all statutory penalties against Defendants, all in the sums
6 as provided by the California Labor Code and/or other applicable statutes. In addition, to the
7 extent that overtime compensation is owed Plaintiff and the Class Members whose
8 employment has been terminated, Defendants' conduct violates Labor Code §§ 201 and/or
9 202, entitling Plaintiff and the Class Members to waiting time penalties under Labor Code §
10 203, which penalties are sought herein on behalf of Plaintiff and the Class Members.

11 65. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
12 for.

13 **FOURTH CAUSE OF ACTION**
14 **Failure to Comply with Itemized Employee Wage Statement Requirements**
15 **(California Labor Code §§ 226, 1174 and 1175; and The Wage Order)**
16 **(Plaintiff and the Class Members against Defendants)**

17 66. Plaintiff and the Class Members allege and incorporate by reference all of the
18 allegations contained in the preceding paragraphs, as though fully set forth herein.

19 67. Labor Code § 226(a) and the Wage Order require Defendants to itemize in wage
20 statements all deductions from payment of wages, to accurately report total hours worked, to
21 report the rate of pay for hours worked, and keep the records on file at the place of
22 employment or at a central location within the State of California. Defendants have
23 knowingly and intentionally failed to comply with Labor Code § 226(a) and the Wage Order
24 with respect to wage statements they have provided to Plaintiff and the Class Members.

25 68. Labor Code § 1174 and the Wage Order requires Defendants to maintain and
26 preserve, at the place of employment or at a central location within the State of California,
27 among other items, accurate records showing the names and addresses of all employees
28 employed, payroll records accurately showing the hours worked daily and the wages paid to its
employees. Defendants have knowingly and intentionally failed to comply with these
requirements in violation of Labor Code §§ 1174 and 1175 and the Wage Order.

1 69. Labor Code § 226(a) and the Wage Order provide that every employer shall,
2 semimonthly or at the time of each payment of wages, furnish each of its employees an
3 accurate itemized statement in writing showing gross wages earned, total hours worked by the
4 employee, the number of piece rate units and the applicable rate, all deductions, net wages
5 earned, the inclusive dates of the period for which the employee is paid, the name of the
6 employee and the last four digits of the employee's social security number (or an employee
7 identification number), the name and address of the legal entity that is the employer and all
8 applicable hourly rates in effect during the pay period and the corresponding numbers of hours
9 worked at each hourly rate by the employee. Labor Code § 226(a) mandates that deductions
10 made from payments of wages shall be recorded in ink, properly dated and a copy of the
11 statement or a record of deductions be kept on file by the employer for at least three years.
12 Moreover, the Wage Order requires Defendants to maintain time records for each employee
13 showing, including but not limited to, an accurate report of the total hours worked by each
14 employee, when the employee begins and ends each work period, meal periods, and total daily
15 hours worked in itemized wage statements, and all deductions from payment of wages.

16 70. Throughout the Class Period, Defendants have regularly and consistently,
17 intentionally and willfully, failed to provide Plaintiff and the Class Members with complete
18 and accurate wage statements.

19 71. The Wage Order provides that an employer must keep accurate information with
20 regard to each employee, which shall include time records showing when the employee begins
21 and ends each work period, total daily hours worked and total hours worked in the pay period
22 and the applicable rates of pay.

23 72. Throughout the Class Period, Defendants continually failed to keep accurate
24 records and information regarding Plaintiff and the Class Members as required by the Wage
25 Order. Defendants repeatedly provided Plaintiff and the Class Members with wage statements
26 that, among other inaccuracies, failed to include complete and accurate information on the
27 following: (1) gross wages earned; (2) total hours worked; (3) all deductions from wages; (4)
28 net wages earned; (5) all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate; and (6) reimbursement for work-
2 related expenses.

3 73. As a result of Defendants' violation of Labor Code §§ 226(a), 1174 and 1175, as
4 well as the Wage Order, Plaintiff and the Class Members have suffered injury and damage to
5 their statutorily-protected rights. These injuries and damages include, but are not limited to,
6 the denial of their legal right to receive and their protected interest in receiving accurate,
7 itemized wage statements under Labor Code § 226(a). Moreover, the inaccurate and
8 incomplete wage statements provided by Defendants deceived Plaintiff and the Class
9 Members about the wages and other compensation to which they were entitled and deprived
10 them of such wages and compensation. As a further result of Defendants' failure to provide
11 Plaintiff and the Class Members with accurate wage statements in accordance with Labor
12 Code § 226 and to keep accurate time records as required by the Wage Order, Plaintiff and the
13 Class Members have suffered injuries and are entitled to penalties under Labor Code § 226
14 and Labor Code § 226.3 which states that any employer who violates § 226 shall be subject to
15 a civil penalty in the amount of \$250.00 per employee per violation in an initial citation. The
16 civil penalty provided for in this section is in addition to any other penalty provided by law, in
17 an amount to be proven at trial. The injuries suffered by Plaintiff and the Class Members
18 include, but are not limited to, having been, and continuing to be, forced to conduct
19 investigations and perform mathematical computations in an attempt to reconstruct their time
20 records; the inability to reconstruct their time records; the inability to discern the amount of
21 wages they were paid and/or the applicable wage rate; the inability to determine the number of
22 hours, including but not limited to, overtime hours they worked; the inability to determine the
23 number of rest periods and meal periods they were forced to forego; the inability to determine
24 whether they were compensated for all meal and rest periods of which they had been deprived;
25 the inability to determine whether they were paid all wages due for work they performed; the
26 inability to determine the amount of wages owing and unpaid; having been, and continuing to
27 be, forced to hire attorneys and initiate a lawsuit in order to ascertain the aforementioned
28 information.

74. Plaintiff and the Class Members are further entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000.00.

75. Plaintiff and the Class Members are also entitled to injunctive relief to ensure compliance with this section, pursuant to Labor Code § 226(g).

76. Pursuant to Labor Code § 226(e), each employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100.00 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, and is entitled to an award of costs and reasonable attorneys' fees.

77. Moreover, an employee is entitled under the Labor Code § 226(g) to injunctive relief to ensure compliance with Labor Code § 226 and is entitled to an award of costs and reasonable attorneys' fees.

78. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed for.

FIFTH CAUSE OF ACTION
Failure to Pay All Wages Upon Termination
(California Labor Code §§ 201, 202 and 203; and The Wage Order)
(Plaintiff and the Class Members against Defendants)

79. Plaintiff and the Class Members incorporate by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

80. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

81. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

82. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the

1 employee has given 72 hours previous notice of his or her intention to quit, in which case the
2 employee is entitled to his or her wages at the time of quitting.

3 83. Defendants willfully failed to pay Plaintiff and the Class Members all their
4 wages due, as alleged hereinabove and hereinafter, upon the termination of their employment
5 within the times prescribed by Labor Code §§201 and 202 and are therefore subject to a
6 waiting time penalty. Plaintiff and the Class Members are entitled to recover from Defendants
7 the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a
8 thirty (30) day maximum pursuant to California Labor Code § 203.

9 84. WHEREFORE, Plaintiff and the Class Members request relief as herein prayed
10 for.

11 **SIXTH CAUSE OF ACTION**
12 **Violation of Labor Code § 2802**
13 **(Plaintiff and the Class Members against Defendants)**

14 85. Plaintiff and the Class Members incorporate by reference all of the allegations
15 contained in the preceding paragraphs as though fully set forth herein.

16 86. Pursuant to Labor Code § 2802 an employer shall indemnify his or her employee
17 for all necessary expenditures or losses incurred by the employee in direct consequence of the
18 employee's discharge of his or her duties.

19 87. At all times herein alleged, Defendants regularly and consistently violated Labor
20 Code § 2802 by failing to reimburse for expenses incurred in the performance of their duties,
21 including expenses associated with the use of Plaintiff's and the Class Members' personal
22 phones for mandatory work-related purposes.

23 88. Plaintiff and the Class Members were required to retain attorneys to bring this
24 action and are entitled to an award of reasonable attorneys' fees pursuant to Labor Code §
25 2802(c).

26 **SEVENTH CAUSE OF ACTION**
27 **Unfair Business Practices**
28 **(California Business and Professions Code §§ 17200 et seq. and Common Law)**
(Plaintiff and the Class Members against Defendants)

89. Plaintiff and the Class Members hereby incorporate each of the preceding
paragraphs of this Complaint as if fully alleged herein.

1 90. Plaintiff and the Class Members suffered direct injury as a result of the
2 Defendants' conduct, as alleged in the preceding paragraphs, and bring this action under Code
3 of Civil Procedure § 382. The deprivation by Defendants of Plaintiff and the Class Members
4 of wages due and lawful meal and rest periods, and Defendants' provision of inaccurate wage
5 statements, are unlawful business practices within the meaning of Business and Professions
6 Code § 17200, et seq. including, but not limited to, a violation of the Wage Order, regulations,
7 and statutes, and further, whether or not in violation of the aforementioned Wage Order,
8 regulation and statutes, amount to practices which are otherwise unfair.

9 91. Under Business and Professions Code § 17200, et seq., including, but not limited
10 to §§ 17201, 17203, and 17208, Plaintiff asserts standing on behalf of himself and on the
11 behalf of each of the members of the class alleged herein. Plaintiff and the Class Members
12 seek, among others, restitution of compensation due during the Class Period.

13 92. Throughout the Class Period, Defendants have committed violations of law, as
14 described herein, including, but not limited to, violation of Labor Code §§ 204, 216, 221,
15 226.7, 510, 512(a), 1194, 1198, 2802 and the Wage Order.

16 93. These unlawful and unfair business practices defeat the public interest purposes
17 of the State's labor laws, as set forth in the sections of the California Labor Code, the
18 California Code of Regulation and the Wage Order referenced elsewhere in this complaint, all
19 of which promote compliance with labor laws and employment regulations by participants in
20 Defendants' industry.

21 94. Defendants' unfair and unlawful business practices thus have violated the
22 sections of the Labor Code, California Code of Regulation, and the Wage Order referenced in
23 this complaint and have imposed harm on their employees and their competitors and will
24 continue to do so until abated. As a result of these unfair and unlawful business practices,
25 Defendants have retained monies belonging to Plaintiff and the Class Members and they have
26 been unjustly enriched at Plaintiff's and the Class Members' expense. Plaintiff and the Class
27 Members are entitled to restitution of the wages and monies withheld and retained by
28 Defendants during the Class Period and a preliminary and permanent injunction requiring

1 Defendants to pay all wages and sums due to Plaintiff and the Class Members, to provide
2 mandatory rest and meal periods, and to provide accurate and complete wage statements.

3 95. As a direct and proximate result of Defendants' conduct, Plaintiff and the Class
4 Members have suffered injury and loss of money.

5 96. This action will result in the enforcement of an important right affecting the
6 public interest. The conduct of Defendants as alleged herein has been and continues to be
7 unfair, unlawful and harmful to Plaintiff and the Class Members, and the general public.
8 Accordingly, under Code of Civil Procedure § 1021.5, Plaintiff and the Class Members are
9 entitled to an award of reasonable attorneys' fees according to proof.

10 97. WHEREFORE, Plaintiff and the Class Members request relief as hereinafter
11 prayed for.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the Class Members
14 prays as follows:

- 15 1. For an order certifying this action as a class action and proposed Class;
- 16 2. For an order appointing Plaintiff as the representative of all the Class Members;
- 17 3. For an order appointing counsel for Plaintiff as Class Counsel.
- 18 4. As to the First and Second Cause of Action, for unpaid premium wages and
19 penalties pursuant to Labor Code §§ 210, 226.7, 512, 1198 and the Wage Order;
- 20 5. As to the Third Cause of Action, for unpaid wages, including minimum and
21 overtime wages, damages and/or penalties pursuant to Labor Code §§ 510, 558, 1194, 1197,
22 1197.1, and 1198, and the Wage Order;
- 23 6. As to the Fourth Cause of Action, for damages and/or penalties, attorneys' fees
24 and costs pursuant to Labor Code §§ 226 and 226.3, and the Wage Order;
- 25 7. As to the Fifth Cause of Action, for failing to pay all wages upon termination
26 pursuant to Labor Code §§ 201, 202, and 203;
- 27 8. As to the Sixth Cause of Action, for damages and/or penalties pursuant to Labor
28 Code § 2802, and the Wage Order;

9. As to the Seventh Cause of Action, for restitution of unpaid wages and penalties pursuant to Business and Professions Code § 17200 et seq.;

10. As to All Causes of Action, for prejudgment interest from the day such amounts were due and payable.

11. As to All Causes of Action, for attorneys' fees and costs provided by Labor Code §§ 218.5, 226, 1194 and Code of Civil Procedure § 1021.5; and

12. For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 16, 2023

FITZPATRICK & SWANSTON

By: /s/ B. James Fitzpatrick
B. James Fitzpatrick
Attorneys for Plaintiff,
Leonardo Ortega on behalf of himself
and all similarly aggrieved employees