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County of Santa Clara
23CV428021
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

JEFFERSON RODRIGUEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

STATEWIDE TRAFFIC SAFETY AND SIGNS, INC., a Delaware corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 23CV428021

CLASS ACTION COMPLAINT FOR DAMAGES & ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

1. **Failure to Timely Pay Earned Wages in Violation of Labor Code Sections 204 and 210;**
2. **Failure to Pay Minimum Wages in Violation of Labor Code Sections 1197 and 1194;**
3. **Failure to Pay Overtime Compensation in Violation of Labor Code Sections 510 and 1194;**
4. **Failure to Provide Meal Periods in Violation of Labor Code Section 226.7;**
5. **Failure to Provide Rest Periods in Violation of Labor Code Section 226.7;**
6. **Failure to Provide Accurate Wage Statements in Violation of Labor Code Section 226;**
7. **Waiting Time Penalties in Violation of Labor Code Sections 201 and 203;**
8. **Failure to Reimburse Business Expenses in Violation of Labor Code Section 2802;**
9. **Violations of the Private Attorneys General Act of 2004, Labor Code Section 2698, et seq.;**
10. **Unfair Business Practices in Violation of Business and Professions Code Section 17200 et seq.**

Plaintiff JEFFERSON RODRIGUEZ ("Plaintiff"), by his undersigned attorneys, individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act ("PAGA"), and alleges as follows:

JURISDICTION AND VENUE

1. The Superior Court of the State of California, for the County of Santa Clara, has jurisdiction over this case due to the fact that many of the alleged violations of (a) California Labor Code (i.e. Lab. Code section 200 et seq.), (b) California Business and Professions Code section 17200 et seq. and (c) related common law occurred in the County of Santa Clara.

2. Venue is proper in the Superior Court of the State of California, for the County of Santa Clara pursuant to Code of Civil Procedure sections 395 and 395.5 because at least some of the acts complained herein occurred in the County of Santa Clara, including but not limited to, 1101 N. 5th Street, San Jose, California 95112.

PARTIES

3. Plaintiff, JEFFERSON RODRIGUEZ ("Plaintiff" herein), is, and at all relevant times was, a resident of the State of California.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendant STATEWIDE TRAFFIC SAFETY AND SIGNS, INC. ("Statewide Safety") is, and at all relevant times was, a corporation organized and existing under the laws of the state of Delaware, registered and qualified to do business in the state of California, with its principal place of business located at 4244 Mt. Pleasant Street NW, North Canton, Ohio 44720.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of said defendants when ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged,

and that Plaintiff's damages as herein alleged were proximately caused by said defendants. (Defendant Statewide Safety and DOES 1 through 50 shall collectively herein be referred to as "Defendants").

6. Unless otherwise alleged in this Complaint, Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times hereto, the employer, owner, principal, franchisee, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer, and/or alter ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with express and implied permission, consent, and knowledge. The above Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, willfully ignored, approved, authorized, and/or ratified the unlawful acts described herein, and each and every one of the acts and omissions alleged herein were performed by, and/or are attributable to all Defendants.

CLASS ACTION ALLEGATIONS

7. Class Period. The acts complained of herein have occurred, are presently occurring, and are expected to continue occurring, within the time period from four (4) years preceding the filing of the Complaint herein, up to and through the time of trial for this matter.

8. Class Definition. The Class that Plaintiff represents is comprised of the following categories:

a. All individuals that worked for Statewide Safety in the State of California during the Class Period that were not paid all overtime wages dully owed.

b. All individuals that worked for Statewide Safety in the State of California during the Class Period that were not provided legally compliant meal and rest periods.

c. All individuals that worked for Statewide Safety in the State of California during the Class Period that were not reimbursed business expenses that were legally owed.

d. All individuals that worked for Statewide Safety in the State of California during the Class Period that were not provided accurate itemized wage statements.

e. All individuals that worked for Statewide Safety in the State of California during the Class Period that were not paid all wages.

9. Pursuant to Code of Civil Procedure section 382, this action qualifies as a class action because there is a well-defined community of interest in the litigation, and the proposed Class is easily ascertainable.

10. Plaintiff reserves the right under the California Rules of Court, Rule 1855, subdivision (b), to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

11. Numerosity. Plaintiff is informed, believes, and thereon alleges that the potential membership in the Class is so numerous that joinder of all members is impractical. Moreover, the disposition of the claims of the Class in a single action will provide substantial benefits to all parties and the Court. While the exact number of Class members is presently unknown to Plaintiff, Plaintiff estimates membership in the Class to exceed 100. The exact number and specific identities of the members of the Class may be readily ascertained through inspection of Defendants' business records.

12. Commonality. There are numerous questions of law or fact common to Plaintiff and the Class members. These questions include, but are not limited to, the following:

a. Whether Defendants failed to provide the Class with overtime wages dully owed;

b. Whether Defendants failed to provide the Class with legally compliant meal periods, or premium compensation in lieu thereof;

c. Whether Defendants failed to provide the Class with legally compliant rest periods, or premium compensation in lieu thereof;

d. Whether Defendants have engaged in a common course of failing to provide to furnish the Class with accurate itemized wage statements;

e. Whether Defendants have engaged in a common course of failing to provide business expense reimbursement to the Class as legally required;

f. Whether Defendants failed to Pay the Class all wages.

g. The nature and extent of class-wide injury and the measure of compensation for such injury

13. Typicality. The claims of the representative Plaintiff is typical of the claims of the Class. Plaintiff was an employee of Defendant and is a member of the proposed Class. Plaintiff's claims, like the claims of the Class, arise out of the same common course of conduct by Defendants and is based on the same legal and remedial theories.

14. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained competent and capable attorneys who are experienced in class action litigation, including employment law. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor his counsel have interests that are contrary to or that conflict with those of the proposed Class.

15. Predominance. Defendants have engaged in a common course of wage and hour violations toward Plaintiff and members of the Class in that Defendants willfully failed to provide legally compliant duty-free meal periods, failed to provide legally compliant duty-free rest periods, failed to provide all wages, failed to provide accurate itemized wage statements, failed to provide all wages due at the time of separation, and failed to provide the reimbursement of ordinary business expenses. The common issues arising from this conduct that affect Plaintiff and members of the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

16. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the Class is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single form simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, the cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation could also present the potential for inconsistent or contradictory judgments.

SUMMARY OF FACTUAL ALLEGATIONS

Plaintiff's Employment:

17. Defendant Statewide Safety hails itself as "the premier resource for Traffic Control Services across 8 states." It offers a variety of services, products, and rentals for work zone safety systems throughout California. Statewide is a subsidiary of AWP, Inc., d.b.a. AWP Safety, which offers traffic control services over 160 locations across 28 U.S. states and four Canadian provinces. Statewide Safety has over 200 employees and achieved over $69.3 million in revenue in 2022. While Statewide Safety may be a successful company, it blatantly ignores and does not comply with California labor laws.

18. Defendants have engaged in, and continue to engage in, a common course of wage and hour violations against its current and former employees in the State of California.

19. Plaintiff worked as a non-exempt hourly traffic controller for Defendants in San Jose, California from in or around 2021 until in or about July 2023.

20. Plaintiff is informed, believes, and thereon alleges that Defendant Statewide Safety is a provider of traffic control services, which offers a variety of services, products, and rentals for work zone safety systems throughout California.

Defendants' Labor Code Violations:

21. Plaintiff is informed, believes, and thereon alleges that Defendants engaged in a pattern and practice of intentionally using inaccurate employee timecards to short employee hours, failed to provide employees an opportunity to take meal and/or rest periods, failed to provide meal and/or rest period premiums as required, and failed to reimburse employees for necessary business expenses.

22. Defendants established a practice of relying on the inaccurate timecards of their employees who were drivers to determine the hours worked by the traffic controllers who were part of the same job assignment. Whilst traffic controllers, like Plaintiff, would record their own time on more accurate timecards, Defendants chose to rely on the drivers' timecards for recording the hours of traffic controllers, which included meal and/or rest periods which the traffic controllers did not actually take.

23. Plaintiff and other traffic controllers would also often have to spend additional time waiting for drivers to arrive at the work site. As a result, traffic controllers spent several minutes every day working off-the-clock while waiting for drivers to arrive.

24. Plaintiff and other traffic controllers would provide their own more accurate timecards to Defendants, but Defendants would continue to rely on the drivers' inaccurate timecards in order to underpay the traffic controllers by refusing to pay them for the time spent working off-the-clock as the time cards provided by the drivers did not reflect the additional time traffic controllers spent waiting for the drivers, nor did it accurately reflect the meal and/or rest periods of traffic controllers.

25. Plaintiff and other non-exempt employees regularly worked ten (10) to eighteen (18) hour workdays but were unable to take a single timely off-duty meal period of at least thirty (30) minutes before the end of their fifth hour of work or take a single rest period of at least ten (10) minutes for every four hours of work. Plaintiff and other traffic controllers were forced to always remain on duty for the duration of their workday in order to adequately perform their duties in directing traffic. This resulted in the inability for Plaintiff and other traffic controllers to take compliant meal and/or rest periods.

26. Plaintiff recalls being unable to eat all day for over twelve hours. Plaintiff returned home with shaking, sore legs, and even vomited due to the heat and hunger he was forced to endure. However, Plaintiff and other employees rarely, if ever, were given premium compensation for missed, late, short, and/or interrupted meal and rest periods.

27. Statewide Safety also failed to reimburse Plaintiff and other employees for business expenses they incurred as part of their job duties. This includes the purchase of steel-toed boots. Statewide Safety required their employees to purchase these boots with their own money, but never reimbursed them. Plaintiff and other employees also had to use their personal vehicles in order to change work locations throughout the day, which occurred approximately two to three times per day. Statewide Safety required employees to make these work location changes with their personal vehicles, but never reimbursed them for either gas mileage nor wear and tear on their vehicles.

28. Defendant Statewide Safety, as a provider of traffic control services, employs non-exempt hourly workers who are subject to Industrial Welfare Commission ("IWC") Wage Order No. 9-2001, which governs non-exempt hourly employees in the transportation industry, and Labor Code section 515.

FIRST CAUSE OF ACTION

(Failure to Timely Pay Earned Wages in Violation of Labor Code Sections 204 and 210 by Plaintiff against Defendant and DOES 1-50)

29. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

30. Labor Code section 204 provides, in pertinent part:

> All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. … Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

31. Labor Code section 210 provides, in pertinent part:

> …every person who fails to pay the wages of each employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

32. As set forth herein, Defendants engaged in a pattern and practice of intentionally using inaccurate employee timecards to short their hours, failed to provide employees an opportunity to take meal and/or rest periods, failed to provide meal and/or rest period premiums as required, and failed to reimburse employees for necessary business expenses.

33. At all relevant times herein, Defendants willfully failed to pay Plaintiff and the putative class members for all wages earned on the regular payday for each pay period in which these amounts first became due and payable, as required by Labor Code section 204. Plaintiff and the putative class members are entitled to, and thereby request, the unpaid balance of the full amount of wages earned and currently owed.

34. Pursuant to Labor Code section 218, Plaintiff and the putative class members are entitled to, and thereby requests, the unpaid balance of the full amount of wages earned and currently owed.

35. Pursuant to Labor Code section 218.6, Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

36. Pursuant to Labor Code section 210, Plaintiff and the putative class members are entitled to, and thereby request, penalties of $100.00 for the initial violation, and $200.00 for each subsequent violation, plus twenty-five percent (25%) of the amount unlawfully withheld.

37. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code section 218.5, Plaintiff and the putative class members request an award of reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of Labor Code Sections 1197 and 1194 by Plaintiff against Defendant and DOES 1-50)

38. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

39. Labor Code section 1197 provides, in pertinent part: "The minimum wage for employees fixed by the commission or by any state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

40. At all relevant times herein, Defendants willfully failed to pay Plaintiff and the putative class members minimum wages as required by Labor Code section 1197. As alleged herein, Defendants engaged in a pattern and practice of intentionally using inaccurate employee timecards to short Plaintiff and the putative class members' hours. As a result, Defendants failed to pay Plaintiff and the putative class members minimum wages for all hours worked.

41. Labor Code section 1194, subdivision (a) states:

> …any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to an employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

42. Labor Code section 1194.2, subdivision (a) states

> …to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

43. Labor Code section 1197.1, subdivision (a) states

> Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

44. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to and thereby request the unpaid balance of the full amount of minimum wages owed for all work performed during the relevant time period, in an amount to be determined at trial.

45. Pursuant to Labor Code sections 218.6 and 1194, subdivision (a), Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

46. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code sections

218.5 and 1194, subdivision (a), Plaintiff and the putative class members request an award of reasonable attorney's fees and costs.

THIRD CAUSE OF ACTION

(Failure to Pay Overtime Compensation in Violation of Labor Code Sections 510 and 1194 by Plaintiff against Defendant and DOES 1-50)

47. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

48. IWC Wage Order No. 9-2001, which regulates the wages, hours, and working conditions of transportation employees, was applicable and controlled Plaintiff's and the putative class members' employment with Defendants.

49. At all relevant times herein, Plaintiff and the putative class members were non-exempt employees, were paid an hourly rate, and was not primarily engaged in duties that meet any of the tests for exemption.

50. Labor Code section 510, subdivision (a) states:

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

51. Plaintiff and the putative class members regularly worked more than eight (8) hours in a workday and more than forty (40) hours in a workweek throughout the Employment Period. As alleged herein, Defendants engaged in a pattern and practice of intentionally using inaccurate employee timecards to short Plaintiff's and the putative class members' hours, including their overtime hours.

52. As a result, Defendants failed to compensate Plaintiff and the putative class members for all overtime hours worked with premium overtime pay as required under the

aforementioned labor regulations, pay which remains outstanding as of the date of this Complaint.

53. Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to an employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit."

54. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to and thereby request one and one-half times and/or double their regular rate of pay for overtime work performed, in an amount to be determined at trial.

55. Pursuant to Labor Code sections 218.6 and 1194, subdivision (a), Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

56. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code sections 218.5 and 1194, subdivision (a), Plaintiff and the putative class members request an award of reasonable attorney's fees and costs.

FOURTH CAUSE OF ACTION

(Failure to Provide Meal Periods in Violation of Labor Code Sections 226.7 and 512 by Plaintiff against Defendant and DOES 1-50)

57. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

58. Defendants failed to provide Plaintiff and the putative class members with thirty (30) minute "duty free" meal periods as required by Labor Code sections 226.7 and 512, and Section 10 of IWC Wage Order No. 9-2001.

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59. Labor Code section 512, subdivision (a) states:

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

60. Pursuant to Section 10 of IWC Wage Order No. 9-2001, in order for an "on duty" meal period to be permissible, the nature of the work done must have prevented the employees from being relieved of all duties relating to their work for such employers and Plaintiff and the putative class members must consent in writing to the "on duty" meal period.

61. As alleged herein above, Plaintiff and other non-exempt employees regularly worked ten (10) to eighteen (18) hour workdays but were unable to take a single timely off-duty meal period of at least thirty (30) minutes before the end of their fifth hour of work. Defendants' non-exempt employees were forced to always remain on duty for the duration of their workday in order to adequately perform their duties. This resulted in the inability for non-exempt employees to take compliant meal periods. Plaintiff and other non-exempt employees rarely, if ever, were given premium compensation for missed, late, short, and/or interrupted meal and rest periods.

62. Plaintiff and the putative class members did not consent in writing to an "on duty meal period". Furthermore, the nature of the work that Plaintiff and the putative class members did was not such that they were prevented from being relieved of all duties. Despite said requirements of IWC Wage Order No. 9-2001and Labor Code sections 512 and 226.7, Plaintiff and the putative class members were not provided with full, timely, uninterrupted meal periods and were not relieved of all duties during their workdays during the Employment Period. Neither did Plaintiff and the putative class members receive appropriate premium compensation in lieu of receiving required meal periods.

63. There is no applicable exemption that would permit Defendants to fail or refuse to provide Plaintiff and the putative class members with the required meal periods.

64. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to, and thereby request, one hour of pay at their regular rate of pay for each workday that a meal period was not provided consistent with applicable law, in an amount to be determined at trial.

65. Pursuant to Labor Code § 218.6, Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

66. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code § 218.5, Plaintiff and the class members request an award of reasonable attorney's fees and costs.

FIFTH CAUSE OF ACTION

(Failure to Provide Rest Periods in Violation of Labor Code Section 226.7 by Plaintiff against Defendant and DOES 1-50)

67. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

68. Section 11 of IWC Wage Order No. 9-2001, provides, in pertinent part:

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

69. At all relevant times hereto, Defendants failed to comply with Section 11 of IWC Wage Order No. 9-2001, by failing to authorize and permit Plaintiff and the putative class members to take required rest periods. As alleged herein above, Defendants failed to provide their hourly employees with full, timely, off-duty rest periods or premium compensation in lieu thereof.

70. As alleged herein above, Plaintiff and other non-exempt employees regularly worked ten (10) to eighteen (18) hour workdays but were unable to take a single timely off-duty rest period of at least ten (10) minutes per four hours of work. Defendants' non-exempt employees were forced to always remain on duty for the duration of their workday in order to adequately perform their duties. This resulted in the inability of non-exempt employees to take compliant meal periods. Plaintiff and other non-exempt employees rarely, if ever, were given premium compensation for missed, late, short, and/or interrupted meal and rest periods.

71. Defendants further violated this Wage Order and Labor Code section 226.7 by failing to pay Plaintiff and the putative class members, who were not authorized or permitted to take rest periods as required under these orders, an additional one hour of compensation at their regular rate of pay for each day they were not authorized or permitted to take a required rest period. Neither did Plaintiff or the putative class members receive appropriate premium compensation in lieu of receiving required rest periods.

72. Under the aforementioned Wage Order, statutes and regulations, Plaintiff and the putative class members are entitled to, and hereby request one hour of pay at their regular rate of pay for each workday that a rest period was not provided consistent with applicable law, in an amount to be determined at trial.

73. Pursuant to Labor Code § 218.6, Plaintiff and the putative class members request prejudgment interest at the legal rate of ten percent (10.00%) per annum on all unpaid wages from the date such wages were due.

74. Plaintiff and the putative class members have incurred and will continue to incur expenses for attorney's fees and costs in prosecuting this action. Pursuant to Labor Code § 218.5, Plaintiff and the class members request an award of reasonable attorney's fees and costs.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements in Violation of Labor Code Section 226 by Plaintiff against Defendant and DOES 1-50)

75. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

76. During the entirety of Plaintiff and the putative class members' applicable employment periods, and in violation of Labor Code section 226, subdivision (a), Defendants failed to provide them with accurate itemized written statements showing the following: gross wages earned, total hours worked by the employee, all deductions, net wages earned, inclusive dates of the period for which the employee is paid, last four digits of the social security number or employee identification number, address of the legal entity that is the employer, and all applicable rates of pay. These itemized wage statements are required to be kept on file by the employer for at least three years at the place of employment. (Lab. Code § 226, subd. (a).)

77. As alleged herein above, as a result of Defendants' failure to keep and/or utilize accurate timecards, Defendants failed to provide accurate wage statements. Amongst other violations, Defendants failed to accurately itemize net wages earned, gross wages earned, failed to list total hours worked, failed to list all applicable hourly rates and hours worked at those respective rates, failed to list the number of hours working at applicable hourly rates, earnings and time worked at their respective hourly rates, and failed to accurately list all premium pay in lieu of missed meal and rest periods for its employees.

78. As a result of Defendants' willful failure to provide Plaintiff and the putative class members with accurate wage statements as required by Labor Code section 226, subdivision (a), they were deprived of documentation helpful for verifying and calculating the amount of wages owed. Thus, Plaintiff and the putative class members have been damaged because they will be required to expend more time and expense in proving their claims for unpaid wages, unpaid overtime compensation, and calculating the premium payments owed for meal and rest period violations.

79. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and the putative class members are entitled to, and request penalties of $50.00 for the initial violation and $100.00 for each subsequent violation, not exceeding an aggregate penalty of $4,000.00.

SEVENTH CAUSE OF ACTION

(Waiting Time Penalties in Violation of Labor Code Sections 201 and 203 by Plaintiff against Defendant and DOES 1-50)

80. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

81. Plaintiff is informed and believes and based thereon alleges that Defendants knew California law required that Plaintiff and the putative class members be paid wages for all hours worked at their hourly rate of pay and be paid an overtime premium for all overtime hours worked. Despite having the financial ability to pay, Defendants intentionally refused to pay Plaintiff and the putative class members their lawfully earned compensation.

82. Defendants willfully failed to pay Plaintiff and the putative class members all wages due, without abatement or reduction, upon their respective terminations of employment as required by Labor Code section 201. As alleged herein above, payment for Plaintiff and the putative class members unpaid regular, overtime wages, and unreimbursed business expenses as described herein above remains outstanding to the date of this Complaint.

83. Labor Code section 203 states that an employee's wage shall continue as a penalty at the same rate until paid or for a period of up to thirty days from the time they were due, whichever period is shorter.

84. Pursuant to Labor Code section 203, Plaintiff and the putative class members are entitled to, and request waiting time penalties according to proof at time of trial but believed to be in excess of the jurisdiction of this Court.

85. Plaintiff further seeks an award of reasonable attorney's fees and costs, consistent with Labor Code section 218.5.

EIGHTH CAUSE OF ACTION

(Failure to Reimburse Business Expenditures in Violation of Labor Code Section 2802 by Plaintiff against Defendant and DOES 1-50)

86. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

87. At all times herein, Labor Code section 2802, subdivision (a) required Defendants to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of [the employee's] duties, or of [the employee's] obedience to the directions of the employer…"

88. As alleged herein above, during the applicable employment period, and in violation of Labor Code section 2802, Plaintiff and the putative class members were required to pay expenses incurred in the discharge of their duties for Defendants, including purchasing steel-toed boots and using their personal vehicles to change work locations throughout the workday. These expenses are, and were, necessarily incurred by Plaintiff and the putative class members in the discharge of their duties and in carrying out Defendants' principal business. During Plaintiff and the putative class members employment, Defendants had a policy and practice of not reimbursing them for expenses incurred in carrying out their business.

89. As a proximate result of Defendants' conduct, Plaintiff and the putative class members have suffered monetary loss and been deprived of their property in the form of unreimbursed expenses in an amount according to proof.

90. Therefore, Plaintiff and the putative class members are entitled to recover the costs of the business expenses as well as attorneys' fees, costs, and interest pursuant to Labor Code sections 218.5, 218.6, and 2802, subdivision (c), for pursuit of this action.

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NINTH CAUSE OF ACTION

(Violations of the Private Attorneys General Act of 2004, Labor Code Section 2698, et seq. Against Defendant and DOES 1-50)

91. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

92. The California Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, et seq., permits an "aggrieved employee" to bring a lawsuit on behalf of himself and other current and former employees to address an employer's violations of the California Labor Code.

93. Labor Code section 2699, subdivision (f) states in pertinent part:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: …
> (2) If, at the time of the alleged violation, the person employes one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

94. Here, Defendants violated Labor Code sections 201, 203, 204, 210, 226, 226.7, 510, 1194, 1197, and 2802 by failing to pay for all wages, overtime, premium compensation, and business expenses owed to Plaintiff and other aggrieved employees. As set forth herein, Defendants engaged in a pattern and practice of intentionally using inaccurate employee timecards to short their hours, failed to provide employees an opportunity to take meal and/or rest periods, failed to provide meal and/or rest period premiums as required, and failed to reimburse employees for necessary business expenses.

95. Plaintiff is an aggrieved employee in that he did not receive all wages owed to him as described herein, including overtime compensation, nor premium compensation in lieu of receiving duty-free rest and meal periods, nor reimbursement of business expenses.

96. Plaintiff has complied with the PAGA notice provision set forth in Labor Code section 2699.3, subdivision (a). On October 10, 2023, Plaintiff submitted a letter online to the Labor and Workforce Development Agency ("LWDA") and sent the letter via certified mail to

Defendant. A true and correct copy of this letter is attached hereto as Exhibit A and incorporated herein by reference. As of this date, the LWDA, pursuant to Labor Code section 2699.3, subdivision (a), has not yet notified the parties whether it intends to investigate the allegations and whether the LWDA will take the required statutory action. Plaintiff waited the requisite minimum sixty-five (65) days without receiving a response from the LWDA of its intent to investigate before commencing this PAGA action.

97. To the extent that any violation alleged herein does not carry penalties under Labor Code section 2699, subdivision (a), Plaintiff seeks penalties pursuant to Labor Code section 2699, subdivision (f), for Plaintiff and other aggrieved employees he seeks to represent for each pay period in which he or she was aggrieved, in the amounts established by Labor Code section 2699, subdivision (f).

98. Plaintiff and other aggrieved employees seek penalties based upon the factual allegations of this Complaint, on behalf of themselves, all other aggrieved employees, and the State as provided by Labor Code section 2699, subdivision (i).

99. Defendants are liable to Plaintiff, other aggrieved employees, and the State for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs, as set forth below.

<u>TENTH CAUSE OF ACTION</u>

(Unfair Business Practices in Violation of Business and Professions Code Section 17200 et seq. by Plaintiff against Defendant and DOES 1-50)

115. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

116. Defendants' acts constitute a continuing and ongoing unlawful, unfair, and fraudulent activity prohibited by the Unfair Competition Law ("UCL") and justify the issuance of an injunction, restitution, and other equitable relief pursuant to Business and Professions Code section 17203.

117. Labor Code section 90.5, subdivision (a) states that it is the public policy of California to vigorously enforce minimum labor standards to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

118. Labor Code section 1198 renders unlawful any violation or any Labor Code or Wage Order provisions. As set forth herein, Defendants violated a number of Labor Code sections and various provisions IWC Wage Order No. 9-2001.

119. By violating the aforementioned statutes and regulations, including, but not limited to, Labor Code sections 201, 203, 204, 210, 226, 226.7, 510, 1194, and 2802 and sections of IWC Wage Order No. 9-2001, as alleged above, the acts of Defendants constitute unfair and unlawful business practice pursuant to Labor Code section 1198, and within the meaning of Business and Professions Code section 17200 et seq., including, but not limited to, (i) the failure to pay earned wages, (ii) failure to pay earned overtime wages, (iii) failure to timely pay all earned wages upon discharge, (iv) failure to provide meal periods, or premium compensation in lieu thereof, (v) failure to provide rest periods, or premium compensation in lieu thereof, (vi) and failure to issue accurate wage statements.

120. Defendants' violations of sections of the Labor Code as alleged above constitute an unfair business practice because these were done repeatedly over a significant period of time and in a systematic manner to the detriment of Plaintiff. All of the foregoing harmed Plaintiff and continues to harm Plaintiff.

121. Defendants' course of conduct, act, and practice in violation of the California laws mentioned herein above constitutes separate and independent unfair business practices and violations of Business and Professions Code section 17200 et seq.

122. Pursuant to Business and Professions Code section 17200 et seq., Plaintiff seeks restitution of all unlawfully withheld earned wages, and equitable relief in the form of disgorged profits from Defendants' unlawful acts, for a period beginning from four (4) years prior to the filing of this action until judgment, all in an amount according to proof at time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

UNDER THE FIRST CAUSE OF ACTION

(Failure to Timely Pay Earned Wages)

1. For compensatory, consequential, general, and special damages for all unpaid wages, subject to proof;
2. For civil penalties in an amount according to proof at trial, and consistent with Labor Code section 210;
3. For interest on all due and unpaid wages pursuant to Labor Code section 218.6;
4. For attorney's fees and costs pursuant to Labor Code section 218.5;
5. For costs of suit incurred herein; and
6. For such other relief that the Court may deem just and proper.

UNDER THE SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages)

1. For compensatory, consequential, general, and special damages for all unpaid wages, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code sections 218.6 and 1194, subdivision (a);
3. For liquidated damages pursuant to Labor Code section 1194.2, subdivision (a);
4. For attorney's fees and costs pursuant to Labor Code section 218.5;
5. For costs of suit incurred herein; and
6. For such other relief that the Court may deem just and proper.

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UNDER THE THIRD CAUSE OF ACTION

(Failure to Pay Overtime Compensation)

1. For compensatory, consequential, general, and special damages for all unpaid overtime wages, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code sections 218.6 and 1194, subdivision (a);
3. For attorney's fees and costs pursuant to Labor Code sections 218.5 and 1194, subdivision (a);
4. For costs of suit incurred herein; and
5. For such other and further relief that the Court may deem just and proper.

UNDER THE FOURTH CAUSE OF ACTION

(Failure to Provide Meal Periods)

1. For one (1) hour of premium pay for each missed meal period that was not provided, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code section 218.6;
3. For attorney's fees and costs pursuant to Labor Code section 218.5;
4. For costs of suit incurred herein; and
5. For such other and further relief that the Court may deem just and proper.

UNDER THE FIFTH CAUSE OF ACTION

(Failure to Provide Rest Periods)

1. For one (1) hour of premium pay for each missed rest period that was not provided, subject to proof;
2. For interest on all due and unpaid wages pursuant to Labor Code section 218.6;
3. For attorney's fees and costs pursuant to Labor Code section 218.5;
4. For costs of suit incurred herein; and
5. For such other and further relief that the Court may deem just and proper.

UNDER THE SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements)

1. For the assessment of actual damages or a statutory penalty in an amount not to exceed Four Thousand Dollars ($4,000), subject to proof and consistent with Labor Code section 226, subdivision (e);
2. For attorney's fees and costs pursuant to Labor Code section 226, subdivision (e);
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

UNDER THE SEVENTH CAUSE OF ACTION

(Waiting Time Penalties)

1. For waiting time penalties pursuant to Labor Code section 203;
2. For attorney's fees and costs pursuant to Labor Code section 218.5;
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

UNDER THE EIGHTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses)

1. For reimbursement for all expenditures permitted under Labor Code section 2802, including all available penalties;
2. For interest on all unpaid and owed reimbursement of expenditures pursuant to Labor Code section 2802, subdivision (b);
3. For attorney's fees and costs pursuant to Labor Code section 2802, subdivision (c);
4. For costs of suit incurred; and
5. For such further relief that the Court determines to be just and proper.

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UNDER THE NINTH CAUSE OF ACTION

(Violations of the Private Attorneys General Act of 2004)

1. For civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, et seq.;
2. For reasonable attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g).

UNDER THE TENTH CAUSE OF ACTION

(Unfair Business Practices)

1. For restitution of all unpaid wages and monies due to Plaintiff and the disgorgement of profits from the unlawful business practices of Defendants, subject to proof;
2. Interest according to law;
3. For costs of suit incurred herein; and
4. For such other and further relief that the Court may deem just and proper.

Date: December 21, 2023

MARQUEE LAW GROUP, APC

Gary S. Brotman
Attorney for Plaintiff JEFFERSON RODRIGUEZ

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable in the Complaint.

Date: December 21, 2023

MARQUEE LAW GROUP, APC

Gary S. Brotman
Attorney for Plaintiff JEFFERSON RODRIGUEZ