

01/22/2024

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JIMENEZ, JOSE, an individual;

Plaintiff,

v.

PREMIER POOLS SACRAMENTO, LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive;

Defendants.

CASE NO.: 23CV010278

FIRSST AMENDED COMPLAINT FOR:

- (1) RETALIATION IN VIOLATION OF
LABOR CODE SECTION 1102.5;**
- (2) RETALIATION IN VIOLATION OF
LABOR CODE 98.6;**
- (3) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- (4) FAILURE TO PROVIDE MEAL
PERIODS;**
- (5) FAILURE TO PROVIDE REST
PERIODS;**
- (6) FAILURE TO PROVIDE RECOVERY
PERIODS;**
- (7) FAILURE TO PAY MINIMUM
WAGES;**
- (8) FAILURE TO PAY OVERTIME;**
- (9) FAILURE TO PAY SICK PAY AT
CORRECT RATES;**
- (10) FAILURE TO REIMBURSE
BUSINESS EXPENSES;**
- (11) WAITING TIME PENALTIES;**
- (12) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;**
- (13) FAILURE TO TIMELY PRODUCE
WAGE STATEMENTS;**
- (14) FAILURE TO TIMELY PRODUCE
PERSONNEL FILE;**
- (15) UNFAIR COMPETITION; AND,**
- (16) VIOLATIONS OF THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT**

1 Plaintiff Jose Jimenez hereby allege as follows:

2 **INTRODUCTION**

3 1. This action arises from Plaintiff's employment with Defendant PREMIER POOLS
4 SACRAMENTO, LLC. Plaintiff worked for Defendants as construction worker, building residential
5 swimming pools. During his employment, Plaintiff was subjected to numerous unlawful
6 employment practices, including that Defendants paid him by the job (instead of by the hour) during
7 his first few years of employment and denied him the opportunity to take compliant meal periods.
8 When Plaintiff, his brother, and other members of their work crew complained about their breaks,
9 Defendants terminated them in retaliation for such complaints.

10 2. Plaintiff seeks to recover economic and punitive damages, statutory penalties,
11 attorney's fees and pre-judgement interest.

12 **JURISDICTION AND VENUE**

13 3. The amount in controversy exceeds the jurisdictional minimum of this Court.
14 Venue as to each Defendant is proper in this County pursuant to Code of Civil Procedure 395(a).
15 At all times relevant herein, Defendants resided in, and conducted business in, this County; and,
16 Defendants employed Plaintiff in, and committed the acts and omissions giving rise to this lawsuit
17 in, this County.

18 **THE PARTIES**

19 4. Plaintiff is, and at all relevant times, was a resident of Sacramento County,
20 California.

21 5. Defendant PREMIER POOLS SACRAMENTO, LLC sells and installs inground
22 pools to customers in and around the Sacramento area.

23 6. The true names and capacities of Defendants sued herein as DOES 1-10, inclusive,
24 are currently unknown to Plaintiff, who therefore sues them by such fictitious names under Code of
25 Civil Procedure section 474. Plaintiff is informed and believes that each of the Defendants
26 designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff
27 will seek leave of court to amend this Complaint to reflect the true names and capacities of

Defendants designated as DOES when those identities become known.

7. At all relevant times, each Defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the permission and consent of each of the other Defendants.

GENERAL ALLEGATIONS

8. Plaintiff was hired by Defendants in approximately 2017. When he first began working for Defendants, he was subjected to numerous unlawful employment practices, including that Defendants (1) paid him by the job, instead of by the hour, thereby denying him minimum wages and overtime for the hours he worked; (2) failed to record his hours worked or to maintain required time and payroll records; (3) failed to provide him with compliant meal and rest periods; (4) failed to issue him accurate itemized wage statements; (4) failed to pay him all wages that were due and owing during employment; (5) failed to reimburse him for business expenses, including "spoons" used in the construction of pools.

9. In approximately December 2021, Defendants began paying Plaintiff by the hour. However, Defendants' other unlawful labor practices continued.

10. In the Spring of 2023, Plaintiff and his brother (who also worked for Defendants as a non-exempt employee) complained to Defendant's Human Resources manager, Ingrid, that they were not receiving compliant meal periods. In response, she said there was nothing that she could do.

11. After Plaintiff's brother continued to complain, he was switched to a different work crew.

12. Nevertheless, Plaintiff, his brother, and several members of their work crew continued to complain to management regarding their breaks.

13. On or about August 4, 2023, Defendants terminated Plaintiff and the other non-exempt employees who complained about their breaks. Defendants advised them that the reason

1 for their termination was a “lack of work.” In truth, Defendants terminated them in retaliation for
2 their continuing complaints regarding their meal periods.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **(Retaliation – Labor Code § 1102.5)**

6 14. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

7 15. California Labor Code section 1102.5(a) prohibits an employer from retaliating
8 against an employee, because the employee has disclosed information to the employer if the
9 employee has reasonable cause to believe that the information discloses a violation of law.

10 16. Plaintiff repeatedly complained to Defendants’ that he was not receiving timely
11 meal periods before the end of this fifth hour of work.

12 17. Defendants terminated Plaintiff’s employment in August 2023 in retaliation for
13 making these complaints.

14 18. As a proximate result of Defendants’ conduct, Plaintiff has suffered and will suffer
15 economic damages, including loss of income and employment benefits, and emotional distress.

16 **SECOND CAUSE OF ACTION**
17 **(Retaliation – Labor Code § 98.6)**

18 19. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

19 20. California Labor Code section 98.6 prohibits an employer from terminating an
20 employee because the employee has made a written or oral complaint that he or she is owed
21 unpaid wages or because the exercise by the employee on behalf of the employee or others of any
22 right afforded to them under the Labor Code.

23 21. Plaintiff repeatedly complained that he was being denied the right to take compliant
24 meal periods and was entitled to premium pay.

25 22. Defendants terminated Plaintiff’s employment in August 2023 in retaliation for
26 making these complaints.

27 23. As a proximate result of Defendants’ conduct, Plaintiff has suffered and will suffer
28 economic damages, including loss of income and employment benefits, and emotional distress.

THIRD CAUSE OF ACTION
(Wrongful Termination in Violation of Public Policy)

24. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

25. It is violation of California public policy to terminate employment in retaliation for engaging in statutorily protected activity.

26. Defendants terminated Plaintiff's employment in retaliation for engaging in statutorily protected activity as discussed herein.

27. As a proximate result of Defendants' conduct, Plaintiff has suffered and will suffer economic damages, including loss of income and employment benefits, and emotional distress.

FOURTH CAUSE OF ACTION
(Failure to Provide Meal Periods)

28. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

29. Labor Code section 512(a) provides "[a]n 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."

30. The applicable IWC Wage Order, section 11(A) similarly provides that "[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid

1 meal period is agreed to. The written agreement shall state that the employee may, in writing,
2 revoke the agreement at any time.”

3 31. The applicable IWC Wage Order, section 11(B) provides that “[i]f an employer
4 fails to provide an employee a meal period in accordance with the applicable provisions of this
5 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
6 compensation for each workday that the meal period is not provided.”

7 32. Labor Code section 226.7(b) provides that “[a]n employer shall not require an
8 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
9 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
10 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
11 Health.”

12 33. Labor Code section 226.7(c) provides that if an employer fails to provide an
13 employee with a meal period, “the employer shall pay the employee one additional hour of pay at
14 the employee's regular rate of compensation for each workday that the meal or rest or recovery
15 period is not provided.”

16 34. Defendants failed to provide Plaintiff with an opportunity to take compliant meal
17 periods. Plaintiff was routinely forced to take late, shortened or interrupted meal periods..

18 35. Defendants failed to pay Plaintiff premium pay for all non-compliant meal periods.
19 When Defendant paid Plaintiff meal period premiums, it did so at the wrong rate by failing to
20 include all forms of non-discretionary pay into the regular rate, including “ER Cost of.”

21 36. As a result, Plaintiff is entitled to recover premium pay and economic damages for
22 missed meal periods and underpaid meal period premiums.

23 **FIFTH CAUSE OF ACTION**
24 **(Failure to Provide Rest Periods)**

25 37. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

26 38. The applicable IWC Wage Order section 12(A) provides that “[e]very employer shall
27 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
28 middle of each work period. The authorized rest period time shall be based on the total hours worked

1 daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof.
2 However, a rest period need not be authorized for employees whose total daily work time is less
3 than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked
4 for which there shall be no deduction from wages.”

5 39. The applicable IWC Wage Order section 12(B) provides that “[i]f an employer fails
6 to provide an employee a rest period in accordance with the applicable provisions of this order, the
7 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
8 for each workday that the rest period is not provided.”

9 40. Labor Code section 226.7(b) provides that an employer shall not require any
10 employee to work during rest periods.

11 41. Labor Code section 226.7(c) provides that if an employer fails to provide an
12 employee with a rest period, “the employer shall pay the employee one additional hour of pay at
13 the employee's regular rate of compensation for each workday that the meal or rest or recovery
14 period is not provided.”

15 42. Defendants failed to provide Plaintiff with an opportunity to take compliant rest
16 periods. He similarly did not receive second or third rest periods when required by law or received
17 shortened or interrupted rest periods.

18 43. Defendants failed to pay Plaintiff premium pay for these non-compliant rest
19 periods.

20 44. As a result, Plaintiff is entitled to recover premium pay for missed rest periods.

21 **SIXTH CAUSE OF ACTION**
22 **(Failure to Provide Recovery Period)**

23 45. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

24 46. Under California Law, employers in the construction industry must allow and
25 encourage employees to take a preventive cool-down to rest in the shade when they feel they need
26 to protect themselves. When temperatures reach 95 degrees Fahrenheit or above, the employer
27 shall ensure that the employee takes a minimum ten-minute net preventative cool-down rest period
28 every two hours. (8 C.C.R. § 3395.)

1 47. Labor Code section 226.7(b) provides that an employer shall not require any
2 employee to work during recover periods.

3 48. Labor Code section 226.7(c) provides that if an employer fails to provide an
4 employee recovery period, “the employer shall pay the employee one additional hour of pay at the
5 employee's regular rate of compensation for each workday that the meal or rest or recovery period
6 is not provided.”

7 49. Defendants failed to provide Plaintiff with an opportunity to take compliant recovery
8 periods. Plaintiff never received recovery periods, even when temperatures were 95 degrees
9 Fahrenheit or above.

10 50. Defendants failed to pay Plaintiff premium pay for these non-compliant recovery
11 periods.

12 51. As a result, Plaintiff is entitled to recover premium pay for missed recovery
13 periods.

14 **SEVENTH CAUSE OF ACTION**
15 **(Failure to Pay Minimum Wages for All Hours Worked)**

16 52. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

17 53. California Labor Code section 1194 provides that “[n]otwithstanding any
18 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or
19 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
20 the unpaid balance of the full amount of this minimum wage or overtime compensation, including
21 interest thereon, reasonable attorney’s fees, and costs of suit.”

22 54. California Labor Code section 1197.1 provides in relevant part that “[i]n any action
23 under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less
24 than the minimum wage fixed by an order of the commission or by statute, an employee shall be
25 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
26 interest thereon.”

27 55. Defendants failed to pay Plaintiff minimum wages for all hours worked. Among
28 other things, Defendants failed to pay Plaintiff minimum wages for all hours worked and instead

1 paid him by the job until approximately December 2021. Defendants subsequently failed to pay
2 Plaintiff minimum wages or all hours worked, including work performed during meal periods that
3 were “auto-deducted” and “off-the-clock” work that Defendants failed to record due their failure to
4 maintain accurate time records.

5 56. As a result, Plaintiff has not been paid minimum wages for all hours he worked.

6 57. Plaintiff is entitled to recover economic damages, liquidated damages, and interest.

7 **EIGHTH CAUSE OF ACTION**
8 **(Failure to Pay Overtime)**

9 58. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

10 59. California Labor Code section 510(a) provides in relevant part that “[e]ight hours
11 of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work
12 in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of
13 work in any one workweek shall be compensated at the rate of no less than one and one-half times
14 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
15 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
16 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the
17 rate of no less than twice the regular rate of pay of an employee.”

18 60. California Labor Code section 1198 provides that “[t]he maximum hours of work
19 and the standard conditions of labor fixed by the commission shall be the maximum hours of work
20 and the standard conditions of labor for employees. The employment of any employee for longer
21 hours than those fixed by the order or under conditions of labor prohibited by the order is
22 unlawful.”

23 61. The applicable IWC Wage Order, Section 3(A) requires employers to pay non-
24 exempt employees (1) one and one half times the employee’s regular rate of pay for all hours
25 worked in excess of eight hours up to and including twelve hours in any workday, and for the first
26 eight hours worked on the seventh consecutive day of work in a workweek, and (2) double the
27 employee’s regular rate of pay for all hours worked in excess of twelve hours in any workday and
28 for all hours worked in excess of eight hours on the seventh consecutive day of work in a

1 || workweek.

62. Defendants failed to pay Plaintiff overtime for all overtime hours that he worked. Among other things, Defendants failed to pay Plaintiff overtime for overtime hours worked and instead paid him by the job until approximately December 2021. Defendants subsequently failed to pay Plaintiff overtime or all overtime hours worked, including work performed during meal periods that were “auto-deducted” and “off-the-clock” work that Defendants failed to record due their failure to maintain accurate time records.

8 63. Defendant additionally failed to pay Plaintiff overtime at the correct rates.
9 Specifically, Defendants failed to include all forms of non-discretionary pay into the regular rates
10 when calculating overtime pay.

11 64. As a result, Plaintiff has been injured and is entitled to recover economic damages
12 and interest.

NINTH CAUSE OF ACTION
(Underpaid Sick Pay)

65. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

66. California Labor Code section 246(l) provides that an employer must calculate sick pay leave using any of the following calculations: (1) paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; (2) paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment; or, (3) paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

67. Defendants failed to pay Plaintiff sick pay using one of the foregoing calculation
methods. In particular, Defendants failed to include non-discretionary pay, include “ER Cost of”
in the regular rate when calculating sick pay; and did not otherwise calculate sick pay as statutorily
required.

1 68. As a result, Plaintiff has been underpaid the sick pay to which he is entitled and
2 seeks to recover the difference, plus penalties and interest.

3 **TENTH CAUSE OF ACTION**
4 **(Failure to Reimburse Business Expenses)**

5 69. Plaintiff incorporates the preceding paragraphs of the Complaint.

6 70. Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
9 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
10 be unlawful.”

11 71. Defendants failed to reimburse Plaintiff for “spoons” and other equipment that they
12 used in the construction of inground pools.

13 72. As a result, Plaintiff has suffered damages in amount to be determined at trial.

14 **ELEVENTH CAUSE OF ACTION**
15 **(Waiting Time Penalties)**

16 73. Plaintiff incorporates the preceding paragraphs of the Complaint.

17 74. California Labor Code section 201(a) provides in relevant part that “if an employer
18 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
19 immediately.”

20 75. California Labor Code section 202(a) provides in relevant part that “if an employee
21 not having a written contract for a definite period quits his or her employment, his or her wages
22 shall become due and payable not later than 72 hours thereafter, unless the employee has given 72
23 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
24 or her wages at the time of quitting.”

25 76. California Labor Code section 203(a) provides that where an employer willfully
26 fails to timely pay an employee his or her final wages in compliance with these statutes, the wages
27 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
28 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

77. Defendants failed to timely pay Plaintiff all wages that he earned upon termination of his employment. Among other things, Defendants failed to pay Plaintiff minimum wages and overtime, off-the-clock work, meal and rest period premiums, and sick pay at the correct rates as discussed herein.

78. Plaintiff is informed and believes that Defendants acted willfully in failing to timely pay Plaintiff her final wages as Defendants did so intentionally without any good faith dispute regarding the timing or amount of such final wages.

79. As a result, Plaintiff is entitled to recover waiting time penalties pursuant to Labor Code section 203.

TWELFTH CAUSE OF ACTION
(Failure to Provide Accurate Itemized Wage Statements)

80. Plaintiff incorporates the preceding paragraphs of the Complaint.

81. California Labor Code section 226(a) provides in relevant part that “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee.”

2 82. California Labor Code section 226(e) provides that “[a]n employee suffering injury
3 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
4 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
5 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
6 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
7 is entitled to an award of costs and reasonable attorney s fees.”

8 83. Defendants failed to provide Plaintiff with accurate itemized wage statements in
9 compliance with Labor Code section 226(a). Among other things, the wage statements failed to
10 accurately state the total hours worked and the correct rates of pay. In addition to the issues
11 discussed herein, Defendants also included paid meal period premiums in the total hours worked.

12 84. Aa result, Plaintiff was injured because she could not promptly and easily
13 determine from the wage statement the total hours she worked or the hours worked at the various
14 hourly rates.

15 85. Plaintiff is therefore entitled to recover the penalties specified in Labor Code
16 section 226(e).

17 **THIRTEENTH CAUSE OF ACTION**
18 **(Failure to Timely Produce Wage Statements)**

19 86. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

20 87. California Labor Code section 226(c) provides that an employer, who receives a
21 request by a current or former employee to receive copies of his or her wage statements, shall
22 produce the records as soon as practicable and in no event later than 21 calendar days from the
23 date of the request. Where the employer fails to do, the employee is entitled to recover a penalty
24 of seven hundred and fifty dollars. (Labor Code § 226(f).)

25 88. On August 21, 2023, Plaintiff requested copies of his wage statements from
26 Defendants pursuant to Section 226(c). Defendants failed to timely produce the records and the
27 records produced were incomplete.

28 89. Accordingly, Plaintiff is entitled to recover penalties as set forth in Labor Code

1 section 226(f).

2 **FOURTEENTH CAUSE OF ACTION**
3 **(Failure to Timely Produce Personnel File)**

4 90. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

5 91. Labor Code section 1198.5(a) provides that “[e]very current and former employee,
6 or his or her representative, has the right to inspect and receive a copy of the personnel records
7 that the employer maintains relating to the employee's performance or to any grievance concerning
8 the employee.” An employer must produce the employee’s personnel file within thirty days of a
9 written request. (Labor Code § 11985(b).) Where an employer fails to timely do so, the employee
10 is entitled to recover a penalty of seven hundred and fifty dollars. (Labor Code § 1198.5(k).)

11 92. On August 21, 2023, Plaintiff requested copies of his wage statements from
12 Defendants pursuant to Section 1198.5. Defendants failed to timely produce the records and the
13 records produced were incomplete.

14 93. Accordingly, Plaintiff is entitled to recover penalties as set forth in Labor Code
15 section 1198.5(k).

16 **FIFTEENTH CAUSE OF ACTION**
17 **(Unfair Competition)**

18 94. Plaintiff incorporates the preceding paragraphs of the Complaint.

19 95. Defendants’ employment acts, omissions and practices discussed herein further
20 constitute unlawful, unfair and/or fraudulent business acts or practices withing of California
21 Business and Professions Code section 17200.

22 96. As a result of Defendants’ unlawful, unfair and/or fraudulent business acts or
23 practices, (1) Defendants have gained a competitive advantage over other comparable companies
24 doing business in the State of California that comply with their obligations under the California
25 Labor Code and applicable IWC Wage Orders; and (2) Plaintiff has been injured and has lost wages
26 and other compensation as described herein.

27 97. Accordingly, Plaintiff seeks to enjoin Defendants’ unlawful, unfair and/or fraudulent
28 business acts or practices and seeks restitution to restore to her all money which he has been denied.

SIXTEENTH CAUSE OF ACTION
(Violation of the Private Attorneys General Act)

98. Plaintiff incorporates the preceding paragraphs of the Complaint.

99. During the PAGA period (one year and sixty-five days from the filing of this First Amended Complaint), Defendants subjected Plaintiff and similarly situated non-exempt Aggrieved Employees to the foregoing unlawful Labor Code/Wage Order practices as discussed herein.

100. In addition, Defendants failed to maintain accurate time and payroll records for Plaintiff and Aggrieved Employees during the PAGA period. Under California law, an employer must maintain accurate time and pay records, including (1) time records showing when employees begin and ends each work periods, meal periods, split shift intervals, and total hours worked, and (2) pay records showing its employees' hours worked and applicable rates of pay during each pay period. (Labor Code § 1174 and IWC Wage Orders § 7). Defendants failed to maintain these records, including accurate time records showing when Plaintiff and the Aggrieved Employees began and ended their meal periods and workdays. Defendants similarly failed to maintain records for the time spent by Plaintiff and the Aggrieved Defendants performing mandatory drug testing. Defendants are therefore subject to civil penalties.

101. Labor Code section 204 requires an employer to pay all wages that are due and owing to employees twice during each calendar month on days designated in advance by the employer as regular paydays. Defendants violated this statute by failing to pay Plaintiff and Aggrieved Employees all wages that are due and owing during their employment, including wages for "off-the-clock" work, overtime, and meal and rest period premiums. Defendants are therefore subject to civil penalties.

102. Under California law, an employer must provide an employee with written notice at the time of hire that contains the following information. (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (C) The regular payday designated by the

employer in accordance with the requirements of this code; (D) The name of the employer, including any “doing business as” names used by the employer; (E) The physical address of the employer’s main office or principal place of business, and a mailing address, if different; (F) The telephone number of the employer; (G) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier; and, (H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. (Labor Code § 2810.5). Defendants failed to provide this notice to Plaintiff and the Aggrieved Employees. Accordingly, Defendants are subject to civil penalties.

103. California law requires an employer to provide paid sick days to employees at a rate of no less than one hour per every thirty hours worked, beginning on the commencement of employment. (Labor Code § 246(b)(1).) Paid sick leave must be calculated as set forth in Labor Code § 246(l). An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. (Labor Code § 246(i).) Defendants violated these statutes as it did not accrue sick days for Plaintiff and the Aggrieved Employees at the required rate of accrual, did not calculate and pay sick pay to them at the required rate of pay, and did not accurately set forth the amount of available paid sick leave on their wage statements or in a separate writing. Accordingly, Defendants are subject to civil penalties.

104. In sum, during the PAGA period, Defendants violated the Labor Code and Wage Order sections referenced herein, including Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, 2810.5 and the applicable Wage Order, Sections 3, 4, 7, 11, 12, and 20. These violations subject Defendants to civil penalties as set forth in, inter alia, Labor Code section 2699.

105. Under Labor Code section 2699.3, the LWDA must give written notice to the parties it intends to investigate the alleged violations within 60 days of the date of the Plaintiff's written notice.

106. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5 by letter dated October 31, 2023. Plaintiff gave written notice to the LWDA via electronic submission, and via certified mail to all Defendants, of the specific provisions of the Labor Code and applicable Wage Order allegedly violated, including the facts and theories to support the alleged violations.

107. As of the filing of this complaint, the LWDA has not provided the parties with any notice of its intention to investigate these claims.

108. Under Labor Code section 2699.3, Defendants has 33 days after the date of written notice to cure the alleged violations. As of the filing of this complaint, Defendant has not responded to Plaintiff's PAGA notice in an attempt to cure.

109. Plaintiff seeks civil penalties in the amounts set forth in the Labor Code for each of the aforesaid violations and/or default penalties as provided by Labor Code section 2699.

110. Under Labor Code section 2699(g), Plaintiff is also entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief on behalf of himself as follows:

- (1) for compensatory damages according to proof;
- (2) for liquidated damages according to proof;
- (3) for statutory and other available penalties according to proof;
- (4) for an order requiring Defendants to make restitution of all amount wrongfully withheld from Plaintiff as a result of Defendants' unlawful, unfair, or fraudulent employment acts and practices;
- (5) for an order enjoining Defendants from further engaging in their unlawful, unfair, or fraudulent employment acts and practices;

- 1 (6) for civil penalties;
2 (7) for punitive and exemplary damages according to proof;
3 (8) for prejudgment interest as permitted by law;
4 (9) for attorney's fees and costs incurred in prosecuting this action; and,
5 (10) for such further relief that the Court deems appropriate.

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7 Dated: January 22, 2024

BLAKE JONES LAW, PC.

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9 By: 
10 Blake R. Jones
11 Attorneys for Plaintiff
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