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Superior Court of California

County of Los Angeles

12/12/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**FERNANDO QUEZADA, as an individual  
and on behalf of all others similarly situated,

Plaintiff,

vs.

PDQ ENTERPRISES, INC. dba PDQ  
RENTALS, a California corporation; and  
DOES 1 through 100, inclusive,

Defendants.

Case No.: 23STCV24330

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT:**

- (1) **FAILURE TO PAY ALL OVERTIME WAGES OWED (LABOR CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512, 558);**
- (3) **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (LABOR CODE §§ 226.7, 516, 558);**
- (4) **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES (LABOR CODE § 2802);**
- (5) **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226 *et seq.*);**
- (6) **FAILURE TO PAY ALL WAGES UPON TERMINATION (LABOR CODE §§ 201-203);**
- (7) **FAILURE TO PAY SICK PAY WAGES AT THE CORRECT RATE OF PAY (LABOR CODE § 246);**
- (8) **UNFAIR COMPETITION (BUS & PROF CODE § 17200 *et seq.*); and**

**(9) CIVIL PENALTIES UNDER THE  
PRIVATE ATTORNEYS GENERAL  
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL  
UNLIMITED CIVIL CASE**

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Attorneys for Plaintiff  
FERNANDO QUEZADA

1 Plaintiff Fernando Quezada (“Plaintiff”), on behalf of himself and all others similarly situated,  
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against PDQ  
3 Enterprises, Inc. dba PDQ Rentals, a California corporation; and DOES 1 to 100, inclusive (collectively  
4 “Defendants”), and on information and belief alleges as follows:

### 5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this FAC for  
7 recovery of unpaid wages and penalties under California Business and Professions Code § 17200 *et seq.*,  
8 Labor Code §§ 201-204, 226 *et seq.*, 226.7, 246, 510, 512, 516, 558, 1194, 1194.2, 1198, 2698 *et seq.*,  
9 2802 and Industrial Welfare Commission Wage Order 9 (“Wage Order 9”), in addition to seeking  
10 declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil Procedure §  
11 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the  
12 amount in controversy exceeds this Court's jurisdictional minimum.

### 13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a) and  
15 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los  
16 Angeles. Defendants transact business throughout Southern California, including Los Angeles County  
17 and Defendants are within the jurisdiction of this Court for purposes of service of process.

### 18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
20 Plaintiff was and currently is, a California resident. During the four years immediately preceding the  
21 filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause of  
22 action pled herein, Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff  
23 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money and/or  
24 property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226 *et seq.*, 226.7,  
25 246, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802 and California Business and  
26 Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 9, which sets  
27 employment standards for the transportation industry, which includes the industry in which Plaintiff  
28 worked for Defendants.

1           4.       Plaintiff is informed and believes, and based thereon alleges, that during the four years  
2 preceding the filing of the Lawsuit in this action and continuing to the present, Defendants did (and  
3 continue to do) business providing equipment and tool rentals, sales, parts & repair services. Defendants  
4 employed Plaintiff and other, similarly-situated non-exempt, hourly employees within, among other  
5 counties, Los Angeles County and the state of California and, therefore, were (and are) doing business in  
6 Los Angeles County and the State of California.

7           5.       Plaintiff does not know the true names or capacities, whether individual, partner, or  
8 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants  
9 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this FAC  
10 when such true names and capacities are discovered. Plaintiff is informed, and believes, and based  
11 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were  
12 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff  
13 and the Classes (as defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs,  
14 injuries and damages complained of herein.

15           6.       Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein,  
16 Defendants were and are the employers of Plaintiff and all members of the Classes.

17           7.       At all times herein mentioned, each of said Defendants participated in the doing of the  
18 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,  
19 and each of them, were the agents, servants, and employees of each and every one of the other  
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within  
21 the course and scope of said agency and employment. Defendants, and each of them, approved of,  
22 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

23           8.       At all times mentioned herein, Defendants, and each of them, were members of and  
24 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope  
25 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges  
26 that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

27                               **GENERAL FACTUAL ALLEGATIONS**

28           9.       Plaintiff, a former employee, was employed by Defendants from approximately April

1 2017 to November 2022. Plaintiff worked as a non-exempt Welder and his job duties included without  
2 limitation, repairs to damaged equipment or machinery at Defendants' facility located in Santa Fe  
3 Springs, California.

4 10. Throughout Plaintiff's employment with Defendants, Plaintiff was generally scheduled to  
5 work Monday through Friday from approximately 7:00 a.m. to approximately 5:00 p.m. Plaintiff  
6 sometimes worked from 7:00 a.m. to 9:00 p.m. and sometimes worked on Saturdays.

7 11. During his employment with Defendants, Plaintiff often worked in excess of eight hours  
8 per workday and/or forty hours per workweek, but did not receive proper overtime compensation equal  
9 to one and one-half time his regular rate of pay for all overtime hours worked. Specifically, Defendants  
10 paid Plaintiff bonuses and/or other forms of pay not properly excludable as a matter of law when  
11 calculating Plaintiff's regular rate of pay (hereinafter referred to as "Incentive Pay"). Despite  
12 Defendants' payment of Incentive Pay to Plaintiff, Defendants failed to include the Incentive Pay when  
13 calculating his regular rate of pay for purposes of overtime, thereby causing Plaintiff to be underpaid for  
14 all his required overtime wages. In addition, despite Defendants' payment of Incentive Pay to Plaintiff  
15 and other non-exempt employees, Defendants' policies and/or procedures failed to include all forms of  
16 Incentive Pay when calculating the regular rate of pay for purposes of paying sick pay in a manner that  
17 fully complies with Labor Code § 246(l) in that Defendants failed to pay sick days at the regular rate of  
18 pay and unlawfully paid sick days at the straight time or base rate of pay.

19 12. During his employment with Defendants, Plaintiff and members of the Meal Period Class  
20 were not provided all legally required meal periods due to Defendants' unlawful meal period policies and  
21 practices. Throughout his employment with Defendants, Plaintiff was not provided all required meal  
22 periods due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free  
23 and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically,  
24 due to Defendants' demands, Plaintiff and members of the Meal Period Class were often prevented from  
25 taking meal periods that commenced before the end of the 5<sup>th</sup> hour of work. In addition, Defendants  
26 maintained policies and practices that permitted supervisors to alter timecards such that meal periods  
27 appeared compliant even though they were not. As a result of Defendants' unlawful meal period policies  
28 and practices, the meal periods of Plaintiff and members of the Meal Period Class were often late, missed,

1 short or otherwise unlawful.

2 13. Although Plaintiff and members of the Meal Period Class were not provided with all  
3 legally-compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff  
4 and members of the Meal Period Class with the required meal period premium at the regular rate of pay  
5 for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.  
6 Also, Defendants failed to include Incentive Pay when calculating the regular rate of pay.

7 14. Plaintiff and members of the Rest Period Class were also not authorized and permitted to  
8 take all legally required paid rest periods due to Defendants' unlawful rest period policies and practices.  
9 Specifically, Plaintiff and members of the Rest Period Class worked shifts in excess of 3.5 hours, but  
10 were not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period  
11 worked, or *major fraction thereof*. Defendants' rest period policies and practices failed to authorize and  
12 permit third rest breaks after 10 hours of work or fourth rest breaks after 14 hours of work. As a result,  
13 Defendants failed to authorize and permit duty-free rest periods for every four hours worked, or *major*  
14 *fraction thereof*.

15 15. On those occasions when Plaintiff and members of the Rest Period Class were not  
16 authorized and permitted to take all legally-compliant rest periods to which they were entitled,  
17 Defendants failed to compensate Plaintiff and members of the Rest Period Class with the required rest  
18 period premium at the regular rate of pay for each workday in which he experienced a rest period violation  
19 as mandated by Labor Code § 226.7. Also, Defendants failed to include Incentive Pay when calculating  
20 the regular rate of pay.

21 16. Throughout Plaintiff's employment with Defendants, Defendants failed to reimburse  
22 Plaintiff for expenses he incurred in direct consequence of the discharge of his duties including, without  
23 limitation, costs incurred for using his personal cellular phone. Specifically, Plaintiff and other non-  
24 exempt employees were required to use their personal cell phones for work. Despite the necessity of  
25 incurring expenses in the discharge of his duties, Plaintiff was never reimbursed for all necessary  
26 expenditures he incurred as a direct consequence of the discharge of his duties, as mandated by Labor  
27 Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

28 17. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal

and rest period premium wages, and sick pay wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

18. As a further result of Defendants' failure to pay all overtime wages, and failure to pay all meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon separation of his employment with Defendants. Further, as a result of Defendants' failure to pay overtime wages and as a result of Defendants' failure to pay Plaintiff and other non-exempt employees' their sick pay at their regular rate of pay pursuant to Labor Code section 246(l), Defendants failed to pay all wages owed to Plaintiff and other former non-exempt employees upon their separation of employment with Defendants.

### **CLASS ACTION ALLEGATIONS**

19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all of Defendants' current and former hourly, non-exempt employees in California who worked more than eight hours per day and/or forty hours per week, and were subject to Defendants' timekeeping policies and practices, during the four years immediately preceding the filing of this lawsuit through the present.
- b. The Meal Period Class consists of all of Defendants' current and former hourly, non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this lawsuit through the present.
- c. The Rest Period Class consists of all of Defendants' current and former hourly, non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of this lawsuit through the present.
- d. The Wage Statement Class consists of all of Defendants' current and former hourly, non-exempt employees in California, as well as all members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; and/or (v) Sick Pay Class during the one year immediately preceding the filing of this lawsuit through the present.

- 1 e. The Reimbursement Class consists of all of Defendants' current and former hourly, non-  
2 exempt employees who worked in California who were required to use their personal  
3 cellular phones in connection with the discharge of their work duties, during the four years  
4 immediately preceding the filing of this Lawsuit through the present.
- 5 f. The Sick Pay Class consists of all of Defendants' current and former non-exempt  
6 employees in California who were subject to Defendants' timekeeping policies/practices,  
7 during the four years preceding the filing of the lawsuit through the present, and who were  
8 paid sick pay at less than their regular rate of pay.
- 9 g. The Waiting Time Penalty Class consists of consists of Defendants' formerly employed  
10 members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class;  
11 (iv) Rest Period Class, (v) Wage Statement Class; and/or (vi) any formerly employed non-  
12 exempt employees of Defendants who were paid sick pay at less than the regular rate of  
13 pay, who separated from employment during the three years immediately preceding the  
14 filing of the lawsuit through the present.
- 15 h. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class;  
16 (iii) Meal Period Class; (iv) Rest Period Class; (v) Sick Pay Class; and/or (vii)  
17 Reimbursement Class, during the four years immediately preceding the filing of this  
18 Lawsuit through the present.

19 20. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend  
20 or modify the description of the various classes with greater specificity or further division into subclasses  
21 or limitation to particular issues.

22 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder  
23 of all members would be unfeasible and not practicable. The membership of the Classes is unknown to  
24 Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one  
25 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of  
26 Defendants' employment records.

27 22. **Common Questions of Law and Fact Predominate/Well Defined Community of**  
28 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated

employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants properly paid all overtime wages at the correct regular rate of pay and/or paid for all hours worked pursuant to Labor Code §§ 204, 510, and 558;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants properly reimbursed the members of the Reimbursement Class for all necessary business expenses incurred;
- v. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vii. Whether Defendants failed to pay Plaintiff and other non-exempt employees' their sick pay at their regular rate of pay pursuant to Labor Code § 246(l); and
- viii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

**23. Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, meal and/or rest period policies/practices, sick pay payment, payment of final wages due upon separation of employment, and reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

1           24.     **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff  
2 was employed by Defendants as an hourly, non-exempt employee in California during the statute(s) of  
3 limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff, like  
4 the members of the Classes, was not provided all legally required minimum and overtime wages, was not  
5 provided with all required meal periods, was not authorized and permitted to take all required rest periods,  
6 did not receive all meal and rest period premium wages when he was not provided compliant meal and  
7 rest periods, was not properly reimbursed for all necessarily incurred business expenses, was not paid  
8 sick pay at the regular rate of pay, was not paid all final wages due upon separation of employment, and  
9 was not provided with accurate, itemized wage statements.

10           25.     **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to  
11 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's  
12 attorneys are ready, willing and able to fully and adequately represent the members of the Classes and  
13 Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in  
14 state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of  
15 the members of the Classes.

16           26.     **Superiority:** The California Labor Code is broadly remedial in nature and serves an  
17 important public interest in establishing minimum working conditions and standards in California. These  
18 laws and labor standards protect the average working employee from exploitation by employers who  
19 have the responsibility to follow the laws and who may seek to take advantage of superior economic and  
20 bargaining power in setting onerous terms and conditions of employment. The nature of this action and  
21 the format of laws available to Plaintiff and members of the Classes make the class action format a  
22 particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee  
23 were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable  
24 advantage since they would be able to exploit and overwhelm the limited resources of each individual  
25 plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of  
26 the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by  
27 employees who would be disinclined to file an action against their former and/or current employer for  
28 real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment.

Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are maintainable as a Class under § 382 of the Code of Civil Procedure.

**FIRST CAUSE OF ACTION**

**FAILURE TO PAY ALL OVERTIME WAGES OWED**

**(AGAINST ALL DEFENDANTS)**

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

29. At all times relevant herein Defendants were required to properly compensate Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to California Labor Code §§ 510 and 1194, and Wage Order 9. Labor Code § 510 and Wage Order 9, Section 3 require an employer to pay an employee “one and one-half (1½) times the regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and Wage Order 9, Section 3 also require an employer to pay an employee double the employee’s regular rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such hours.

1           30.     The foregoing practices and policies are unlawful and create entitlement to recovery by  
2 Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime  
3 premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys'  
4 fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage  
5 Order 9, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

6                                   **SECOND CAUSE OF ACTION**

7                                   **FAILURE TO PROVIDE MEAL PERIODS**

8                                   **(AGAINST ALL DEFENDANTS)**

9           31.     Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10          32.     Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their  
11 affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and  
12 members of the Meal Period Class, with all legally compliant meal periods in accordance with the  
13 mandates of the California Labor Code and Wage Order 9, § 11. Despite Defendants' violations,  
14 Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at  
15 their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7, and  
16 512.

17          33.     As a result, Defendants are responsible for paying premium compensation for meal period  
18 violations including interest thereon, as well as statutory penalties, civil penalties, and costs of suit,  
19 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 9, California Code of Civil Procedure §  
20 1021.5 and Civil Code §§ 3287(b) and 3289.

21                                   **THIRD CAUSE OF ACTION**

22                                   **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

23                                   **(AGAINST ALL DEFENDANTS)**

24          34.     Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25          35.     Wage Order 9, § 12 and California Labor Code §§ 226.7, 516 and 558 establish the right  
26 of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest  
27 time for each four (4) hour period worked, or *major fraction thereof*.

28          36.     As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the

1 Rest Period Class to take all required rest periods.

2 37. The foregoing violations create an entitlement to recovery by Plaintiff and members of  
3 the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including  
4 interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code  
5 §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 **(AGAINST ALL DEFENDANTS)**

9 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully  
10 set forth herein.

11 39. This cause of action is brought pursuant to Labor Code § 2802, which requires an  
12 employer to “indemnify his or her employees for all necessary expenditures or losses incurred by the  
13 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
14 directions of the employer.”

15 40. As alleged herein, and due to their unlawful reimbursement policies and/or practices,  
16 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class all of their  
17 necessary business expenses, including, among other things, expenses related to use of personal cellular  
18 phones.

19 41. As a proximate result of Defendants’ failure to indemnify Plaintiff and the members of  
20 the Reimbursement Class for their necessary business expenses incurred, Plaintiff and members of the  
21 Reimbursement Class are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in  
22 sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**

25 **(AGAINST ALL DEFENDANTS)**

26 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly  
28 and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of

1 the Wage Statement Class with complete and accurate wage statements with respect to their actual regular  
2 and overtime hours worked, total gross wages earned, total deductions, employer address, and total net  
3 wages earned, all in violation of Labor Code § 226 *et seq.*

4 44. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class  
5 with complete and accurate itemized wage statements resulted in actual injury, as said failures led to,  
6 among other things, unpaid wages and unpaid rest period premium wages, and deprived them of the  
7 information necessary to identify the discrepancies in Defendants' reported data.

8 45. Defendants' failures create an entitlement to recovery by Plaintiff and members of the  
9 Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et*  
10 *seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according  
11 to California Labor Code § 226 *et seq.*

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

14 **(AGAINST ALL DEFENDANTS)**

15 46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an  
17 employer to pay all wages immediately at the time of termination of employment in the event the  
18 employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent  
19 to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said  
20 employee's wages become due and payable not later than 72 hours upon said employee's last date of  
21 employment.

22 48. Defendants failed to timely pay Plaintiff all of his final wages at the time of termination,  
23 which include, among other things, underpaid minimum and overtime wages, and meal and rest period  
24 premium wages, and underpaid sick pay wages. Further, Plaintiff is informed and believes, and based  
25 thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay  
26 members of the Waiting Time Class all earned wages at the end of employment in a timely manner  
27 pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was  
28 willful within the meaning of Labor Code § 203.

**SEVENTH CAUSE OF ACTION**  
**FAILURE TO PAY SICK PAY WAGES**  
**(AGAINST ALL DEFENDANTS)**

49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

50. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "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," or (ii) "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."

51. As a matter of policy and practice, Plaintiff, is informed and believes, and that basis states, that Defendants pay sick pay wages to Plaintiff and the other members of the Sick Pay Class at the incorrect rate of pay. Plaintiff and the other members of the Sick Pay Class regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the other members of the Sick Pay Class at the base hourly pay, as opposed to the regular rate of pay, which would consider all non- hourly remuneration in addition to base hourly wages, or the rate resulting from 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. As a result, Defendant underpaid sick pay wages to Plaintiff and the other members of the Sick Pay Class.

52. Cal. Lab. Code § 204 provides that wages generally are due and payable twice during each calendar month and are to be paid no later than the payday for the next regular payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for the next regular payroll

1 period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201 provides that if  
2 an employer discharges an employee, wages earned and unpaid at the time of discharge are due and  
3 payable immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all unpaid  
4 wages no later than 72 hours after an employee quits his or her employment, unless the employee has  
5 given 72-hour notice of his or her intention to quit, in which case the employee is entitled to his or her  
6 wages at the time of quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code  
7 § 203 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code  
8 §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at the  
9 same rate until paid, but the wages shall not continue for more than thirty (30) days.

10 53. As alleged herein and as a matter of policy and practice, Defendant routinely underpays  
11 sick pay wages and thus did not timely pay Plaintiff and the other members of the Sick Pay Class all  
12 owing and underpaid sick pay wages. As a result, Defendant violates Cal. Lab. Code § 246, among other  
13 Labor Code provisions. Because Defendants willfully failed to timely pay Plaintiff and the other  
14 members of the Sick Pay Class all sick pay wages due, Defendant is subject to applicable penalties.

15 **EIGHTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **(AGAINST ALL DEFENDANTS)**

18 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 55. Defendants have engaged and continue to engage in unfair and/or unlawful business  
20 practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing  
21 to authorize and permit all required rest periods, or pay premium payments in lieu thereof.

22 56. Defendants' utilization of these unfair and/or unlawful business practices deprived  
23 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally  
24 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over  
25 Defendants' competitors who have been and/or are currently employing workers and attempting to do so  
26 in honest compliance with applicable wage and hour laws.

27 57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein,  
28 Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as

necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

### **NINTH CAUSE OF ACTION**

#### **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

#### **(AGAINST ALL DEFENDANTS)**

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Defendants have committed several Labor Code violations against Plaintiff and other Aggrieved Employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and the aggrieved employees;
- c) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and the aggrieved employees;

- 1 d) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved  
2 employees with accurate and compliant itemized wage statements;
- 3 e) Defendants violated Labor Code §§ 204 and 210 by failing to pay Plaintiff and other  
4 aggrieved employees all earned wages at least twice during each calendar month;
- 5 f) Defendants violated Labor Code § 246 by failing to pay Plaintiff and other aggrieved  
6 employees sick pay at the legal pay rate;
- 7 g) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final  
8 wages due to Plaintiff and other aggrieved employees; and
- 9 h) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf  
10 of Mr. Plaintiff and other aggrieved employees.

11 61. On October 6, 2023, Plaintiff notified Defendants via certified mail, and the California  
12 Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the  
13 California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor  
14 Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 60  
15 (a)-(h). Attached hereto as **Exhibit 1** is a true and correct copy of the October 6, 2023 correspondence.  
16 Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff  
17 has exhausted his administrative requirements for bringing a claim under the Labor Code Private  
18 Attorneys General Act with respect to these violations.

19 62. Plaintiff was compelled to retain the services of counsel to file this court action to protect  
20 his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties  
21 owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to  
22 recover under California Labor Code § 2699(g).

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this  
25 suit is brought against Defendants, as follows:

- 26 1. For an order certifying the proposed Classes;
- 27 2. For an order appointing Plaintiff as representative of the Classes;
- 28 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1           4.       Upon the First Cause of Action, for compensatory, consequential, general and special  
2 damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

3           5.       Upon the Second Cause of Action, for compensatory, consequential, general and special  
4 damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

5           6.       Upon the Third Cause of Action, for compensatory, consequential, general and special  
6 damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

7           7.       Upon the Fourth Cause of Action, for compensatory, consequential, general and special  
8 damages according to proof pursuant to Labor Code § 2802;

9           8.       Upon the Fifth Cause of Action, for statutory wage statement penalties pursuant to Labor  
10 Code § 226 *et seq.*;

11          9.       Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor §  
12 203;

13          10.      Upon the Seventh Cause of Action, for penalties, compensatory, consequential, general  
14 and special damages according to proof pursuant to Labor Code § 246;

15          11.      Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes  
16 of all money and/or property unlawfully acquired by Defendants by means of any acts or practices  
17 declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

18          12.      Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved  
19 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a)  
20 and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each  
21 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor  
22 Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2)  
23 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code §  
24 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent  
25 violation pursuant to Labor Code § 558 per employee per pay period; (4) no less than \$5,000.00 and up  
26 to \$25,000.00 for each violation pursuant to Labor Code § 226.8(b) and (c); and/or (5) \$100.00 for each  
27 initial violation and \$200.00 for each subsequent violation per employee per pay period for those  
28 violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code

1 violations cited in Paragraph 60 (a)-(h) above.

2 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §  
3 218.6 and Civil Code §§ 3287 and 3289;

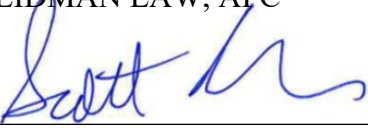
4 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5  
5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

6 15. For such other and further relief the Court may deem just and proper.

7  
8 Dated: December 11, 2023

Respectfully submitted,  
LIDMAN LAW, APC

9  
10 By:

  
\_\_\_\_\_  
Scott M. Lidman  
Attorneys for Plaintiff  
FERNANDO QUEZADA

11  
12  
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

15  
16  
17 Dated: December 11, 2023

Respectfully submitted,  
LIDMAN LAW, APC

18 By:

  
\_\_\_\_\_  
Scott M. Lidman  
Attorneys for Plaintiff  
FERNANDO QUEZADA

EXHIBIT 1

EXHIBIT 1

# LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

October 6, 2023

**VIA LWDA WEBSITE**

Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN  
RECEIPT REQUESTED**

PDQ Enterprises, Inc. dba PDQ Rentals  
c/o Dennis Rudolph Turner, Registered Agent  
10826 Shoemaker Avenue  
Santa Fe Springs, CA 90760

Re: *Fernando Quezada v. PDQ Enterprises, Inc. dba PDQ Rentals*

To Whom It May Concern:

Please be advised that this law firm represents Fernando Quezada (“Mr. Quezada”) in claims arising from his employment with PDQ Enterprises, Inc., a California corporation dba PDQ Rentals (“Defendant”). Mr. Quezada is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly, non-exempt employees working for Defendant in California during the one year immediately preceding the date of this letter through the present date, and continuing through a civil judgment if the LWDA takes no action and Mr. Quezada files a civil lawsuit seeking civil penalties.

Mr. Quezada, a former employee, was employed by Defendant from approximately April 2017 to November 2022. Mr. Quezada worked as a non-exempt Welder and his job duties included without limitation, repairs to damaged equipment or machinery at Defendant’s facility located in Santa Fe Springs, California.

Throughout Mr. Quezada’s employment with Defendant, Mr. Quezada was generally scheduled to work Monday through Friday from approximately 7:00 a.m. to approximately 5:00 p.m. Mr. Quezada sometimes worked from 7:00 a.m. to 9:00 p.m. and sometimes worked on Saturdays.

During his employment with Defendant, Mr. Quezada often worked in excess of eight hours per workday and/or forty hours per workweek, but did not receive proper overtime compensation equal to one and one-half time his regular rate of pay for all overtime hours worked. Specifically, Defendant paid Mr. Quezada bonuses and/or other forms of pay not properly excludable as a matter of law when

calculating Mr. Quezada's regular rate of pay (hereinafter referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Quezada, Defendant failed to include the Incentive Pay when calculating his regular rate of pay for purposes of overtime, thereby causing Mr. Quezada to be underpaid for all his required overtime wages. In addition, despite Defendant's payment of Incentive Pay to Mr. Quezada and other non-exempt employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay for purposes of paying sick pay in a manner that fully complies with Labor Code § 246(l) in that Defendant failed to pay sick days at the regular rate of pay and unlawfully paid sick days at the straight time or base rate of pay.

During his employment with Defendant, Mr. Quezada and other non-exempt employees were not provided all legally required meal periods due to Defendant's unlawful meal period policies and practices. Throughout his employment with Defendant, Mr. Quezada was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to Defendant's demands, Mr. Quezada and other non-exempt employees often prevented from taking meal periods that commenced before the end of the 5<sup>th</sup> hour of work. In addition, Defendant maintained policies and practices that permitted supervisors to alter timecards such that meal periods appeared compliant even though they were not. As a result of Defendant's unlawful meal period policies and practices, the meal periods of Mr. Quezada and other non-exempt employees were often late, missed, short or otherwise unlawful.

Although Mr. Quezada and other non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Quezada and other non-exempt employees with the required meal period premium at the regular rate of pay for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Also, Defendant failed to include Incentive Pay when calculating the regular rate of pay.

Mr. Quezada and other non-exempt employees were also not authorized and permitted to take all legally required paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, Mr. Quezada and other non-exempt employees worked shifts in excess of 3.5 hours, but were not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or major fraction thereof. Defendant's rest period policies and practices failed to authorize and permit third rest breaks after 10 hours of work or fourth rest breaks after 14 hours of work. As a result, Defendant failed to authorize and permit duty-free rest periods for every four hours worked, or major fraction thereof.

On those occasions when Mr. Quezada and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Mr. Quezada and other non-exempt employees with the required rest period premium at the regular rate of pay for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Also, Defendant failed to include Incentive Pay when calculating the regular rate of pay.

Throughout Mr. Quezada's employment with Defendant, Defendant failed to reimburse Mr. Quezada for expenses he incurred in direct consequence of the discharge of his duties including, without limitation, costs incurred for using his personal cellular phone. Specifically, Mr. Quezada and other non-exempt employees were required to use their personal cell phones for work. Despite the necessity of incurring expenses in the discharge of his duties, Mr. Quezada was never reimbursed for all necessary

expenditures he incurred as a direct consequence of the discharge of his duties, as mandated by Labor Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, and sick pay wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Quezada and other non-exempt employees.

As a further result of Defendant's failure to pay all overtime wages, and failure to pay all meal and rest period premium wages, Defendant failed to pay all wages owed to Mr. Quezada upon separation of his employment with Defendant. Further, as a result of Defendant's failure to pay overtime wages and as a result of Defendant's failure to pay Mr. Quezada and other non-exempt employees' their sick pay at their regular rate of pay pursuant to Labor Code section 246(l), Defendant failed to pay all wages owed to Mr. Quezada and other former non-exempt employees upon their separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 9 ("Wage Order 9"):

#### Overtime Violations

Defendant was required to pay Mr. Quezada and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 9, § 3. According to Labor Code § 510(a), "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." This Section further provides, "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." As alleged above, Defendant paid Mr. Quezada bonuses and/or other forms of pay not properly excludable as a matter of law when calculating Mr. Quezada's regular rate of pay (hereinafter referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Quezada, Defendant failed to include the Incentive Pay when calculating his regular rate of pay for purposes of overtime, thereby causing Mr. Quezada to be underpaid for all his required overtime wages. As a result of Defendant's policies and/or practices that fail to compensate for all hours worked at the correct overtime rate, Mr. Quezada and other aggrieved employees were deprived all required overtime wages earned.

#### Meal Period Violations

As alleged above, Defendant failed to provide their aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 9, § 11. As described above, Specifically, due to Defendant's demands, Mr. Quezada and other aggrieved employees were often prevented from taking meal periods that commenced before the end of the 5<sup>th</sup> hour of work. In addition, Defendant maintained policies and practices that permitted supervisors to alter timecards such that meal periods appeared compliant even though they were not. This policy and practice of Defendant not providing lawful meal periods to Mr. Quezada and/or requiring Mr. Quezada and other aggrieved employees to take a meal period after the end of the fifth hour of work violates California law. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If

an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] 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 that the meal or rest or recovery period is not provided.""). Although the aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

#### Rest Period Violations

Defendant also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 9, § 12. Specifically, Mr. Quezada and other aggrieved employees worked shifts in excess of 3.5 hours, but were not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or major fraction thereof. Defendant's rest period policies and practices failed to authorize and permit third rest breaks after 10 hours of work or fourth rest breaks after 14 hours of work. As a result, Mr. Quezada and the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an 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 that the meal or rest period is not provided.")

#### Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Quezada and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all overtime wages earned, meal and rest period premiums, total gross wages earned, and total net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Quezada and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime wages earned and meal and rest period premiums, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

#### Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Quezada and other aggrieved employees all of their final wages at the time of separation, which included, among other things, unpaid overtime wages, and meal and rest period premium wages.

#### Failure to Pay Sick Pay at the Legal Pay Rate

Defendant's pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §§ 246, 248.5 and/or Labor Code §§ 2699, *et seq.*, to recovery by Mr. Quezada and other aggrieved employees, in a civil action, to the extent allowed by law.

Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code § 246(b)(1) states: "An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Labor Code §246(l) states: "For the purposes of this section, an employer shall calculate paid sick 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. (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."

Defendant, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/ or operated by Defendant, during the relevant time period: (a) administered a uniform company policy and practice as to the pay policies regarding Mr. Quezada and other aggrieved employees; and (b) failed to pay Mr. Quezada and other aggrieved employees for paid sick days in a manner that fully complies with Labor Code § 246(l), failed to pay sick days at the regular rate of pay, and/or unlawfully paid sick days at the straight time or base rate of pay.

As an "aggrieved employee," Mr. Quezada will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Quezada's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Quezada and other aggrieved employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Quezada and the aggrieved employees;
- c) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Quezada and the aggrieved employees;
- d) Defendant violated Labor Code § 226 by failing to furnish Mr. Quezada and other aggrieved employees with accurate and compliant itemized wage statements;
- e) Defendant violated Labor Code §§ 204 and 210 by failing to pay Mr. Quezada and other aggrieved employees all earned wages at least twice during each calendar month;

- f) Defendant violated Labor Code § 246 by failing to pay Mr. Quezada and other aggrieved employees sick pay at the legal pay rate
- g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Quezada and other aggrieved employees; and
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Quezada and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,  
LIDMAN LAW, APC



Scott M. Lidman