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on behalf of himself, all others similarly situated,
and the general public,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Hannah Houston-Will, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MAURICE MACK, on behalf of himself and
all others similarly situated and on behalf of
the general public,

Plaintiff,

v.

KOBO EVENTS LLC, a California limited
liability company, doing business as
4DIAMOND EVENTS and TITANIUM,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2024-00004372-CU-MC-CTL

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES EARNED (LABOR CODE §§ 510, 1174, 1174.5, 1194, 1194.2, AND 1198)**
- 2. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512, 1174, 1174.5, AND 1198; IWC WAGE ORDER 4-2001)**
- 4. FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES (LABOR CODE § 2802)**
- 5. FAILURE TO PROVIDE ACCESS TO PAYROLL RECORDS (LABOR CODE § 226(c))**
- 6. FAILURE TO PROVIDE ACCESS TO PERSONNEL RECORDS (LABOR CODE §§ 432 AND 1198.5)**
- 7. FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))**
- 8. FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203 AND 227.3)**

9. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.

10. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 201.3, 202, 204(d), 204b, 226(a), 226(c), 226.7, 227.3, 432.5, 512, 1174, 1174.5, 1194, 1198, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, 558, AND 1198.5

DEMAND FOR JURY TRIAL

Plaintiff MAURICE MACK (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of KOBO EVENTS LLC, a California limited liability company, doing business as 4DIAMOND EVENTS and TITANIUM, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all non-exempt employees who currently work or formerly worked for Defendants within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had consistent policies of failing to pay Plaintiff and Class Members (as defined below) all minimum and overtime wages earned; reimburse Plaintiff and Class Members for all business-related expenses; provide Plaintiff and Class Members access to payroll records; provide Plaintiff and Class Members access to personnel records; provide Plaintiff and Class Members with accurately itemized wage statements; provide legally compliant meal and rest periods, or compensation in lieu thereof; and timely pay Plaintiff’s and Class Members’ wages during employment and upon separation of employment.

3. Plaintiff, on behalf of himself and Class Members, brings this action pursuant to Labor Code §§ 201, 201.3, 202, 204(d), 204b, 210, 226(a), 226(c), 226.3, 226.7, 227.3, 432.5, 512, 558, 1174, 1174.5, 1194, 1198, 1198.5, and 2802 seeking compensation for all unpaid wages, liquidated

1 damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys'
2 fees and costs.

3 4. Plaintiff, on behalf of himself and Class Members, and pursuant to Business &
4 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all
5 benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement due to
6 Class Members.

7 5. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code
8 §§ 2698 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

9 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
10 because Defendants employed Plaintiff and Class Members in San Diego County, California.

11 II.

12 PARTIES

13 A. Plaintiff

14 7. Plaintiff MAURICE MACK worked for Defendants from July 2021 through August
15 2022 as a non-exempt employee within the State of California, including in San Diego County.

16 8. During his work with Defendants, Plaintiff was:

- 17 a. Willfully denied the payment of all minimum wages earned;
- 18 b. Willfully denied rest and meal periods or compensation in lieu thereof;
- 19 c. Willfully denied the reimbursement of all business-related expenses;
- 20 d. Willfully denied access to payroll and personnel records;
- 21 e. Willfully denied accurately itemized wage statements; and
- 22 f. Willfully denied timely payment of all wages due during employment and
23 upon separation of his employment.

24 B. Defendants

25 9. Defendant KOBO EVENTS LLC is a California limited liability company doing
26 business as 4DIAMOND EVENTS and TITANIUM. Defendant KOBO EVENTS LLC employed
27 Plaintiff and Class Members in San Diego County, California.
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10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following Class composed of and defined as follows:

THE CLASS

All persons employed by Defendants in a non-exempt position in California at any time since the date four years preceding the filing of this Action, plus any additional time tolled by the California State Judicial Council pursuant to Emergency Rule 9 in response to the COVID-19 pandemic and continuing through the present.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

1 15. This action has been brought and may properly be maintained as a class action under
2 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
3 interest in the litigation and the proposed Class are easily ascertainable.

4 **A. Numerosity**

5 16. The potential Class Members as defined are so numerous that joinder of all Class
6 Members is impracticable. While the precise number of Class Members has not been ascertained at
7 this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently
8 employ, and during the relevant time periods employed, over 50 persons in the State of California
9 who fall within the Class definition.

10 17. Accounting for turnover during the relevant period necessarily increases this number.
11 Plaintiff alleges Defendants' employment records would provide information as to the number and
12 location of Class Members. Joinder of Class Members is not practicable.

13 **B. Commonality**

14 18. There are questions of law and fact common to the Class that predominate over any
15 questions affecting only individual Class Members. These common questions of law and fact include,
16 without limitation:

- 17 a. Whether Defendants failed to pay all minimum wages earned to Plaintiff and
18 Class Members, in violation of Labor Code §§ 510, 1174, 1174.5, 1194,
19 1194.2, and 1198;
20 b. Whether Defendants failed to properly provide rest periods or compensation in
21 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7
22 and IWC Wage Order 4-2001;
23 c. Whether Defendants failed to properly provide meal periods or compensation
24 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
25 226.7, 512, 1174, 1174.5, and 1198 and IWC Wage Order 4-2001;
26 d. Whether Defendants failed to reimburse Plaintiff and Class Members for all
27 business-related expenses, in violation of Labor Code § 2802;
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- e. Whether Defendants failed to provide Plaintiff and Class Members access to payroll records, in violation of Labor Code §§ 226(c) and 432;
- f. Whether Defendants failed to provide Plaintiff and Class Members access to personnel records, in violation of Labor Code § 1198.5;
- g. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a), (e);
- h. Whether Defendants failed to maintain accurate records, in violation of Labor Code §§ 1174, 1174.5, and 1198 and IWC Wage Order 4-2001;
- i. Whether Defendants failed to timely pay Plaintiff and Class Members all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203 and 227.3; and
- j. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

19. The claims of the named Plaintiff are typical of the claims of Class Members. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of Class Members. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

21. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class Members is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting

1 only individual members of the proposed Class. Each member of the proposed Class has been
2 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

3 22. Class action treatment will allow those similarly situated persons to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
6 action that would preclude its maintenance as a class action.

7 **IV.**

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES EARNED**

12 **(LABOR CODE §§ 510, 1174, 1174.5, 1194, 1194.2 AND 1198)**

13 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
14 forth herein.

15 24. During the liability period, Defendants failed to compensate Plaintiff and Class
16 Members with all minimum and overtime wages due, in violation of Labor Code §§ 510, 1194, and
17 1194.2 and IWC Wage Order 4-2001. Defendants required Plaintiff and Class Members to be on on-
18 call all day, but they were never paid for this on-call time. An employer is obligated to pay the wages
19 of an hourly employee for all time that the employee is under the control of the employer, and this
20 includes all the time the employee is suffered or permitted to work, whether or not they were required
21 to do so. When Plaintiff and Class Members were on-call, they were under the control of Defendants,
22 and were required to answer their phones immediately and show up to work within thirty minutes.
23 Accordingly, Plaintiff and Class Members should have been compensated for all hours worked, but
24 Defendants failed to do so.

25 25. In addition, Defendants failed to pay Plaintiff and Class Members all overtime wages
26 earned, in violation of Labor Code §§ 510, 558, 1194, and 1194.2 and IWC Wage Order 4-2001.
27 Defendants sometimes paid Plaintiff and Class Members straight time wages only, with no adjustment
28 for premium overtime wages. Specifically, Defendants required Plaintiff and Class Members to work

1 in excess of 8 hours per day and 40 hours per week, but were not always properly compensated for
2 work performed in excess of eight (8) hours in a workday at a rate of no less than one and one-half
3 times the regular rate of pay. Further, Defendants recorded Plaintiff's and Class Members' hours
4 worked based on their scheduled shift *only* and paid them *only* for their scheduled shift time. Because
5 of this practice, Plaintiff and Class Members were required to work off-the-clock, without pay. They
6 were not compensated for time spent completing pre-shift and post-shift activities, or for time spent
7 responding to phone calls and text messages from Defendants regarding work-related matters, all
8 outside of their scheduled shift. These instances deprived Plaintiff and Class Members of significant
9 hours worked and wages due, and constitute violations of Labor Code §§ 510, 558, 1194, and 1194.2
10 and IWC Wage Order 4-2001.

11 26. Furthermore, as discussed above, Defendants failed to maintain accurate records in
12 accordance with Labor Code §§ 1174, 1174.5, and 1198 and IWC Wage Order 4-2001, including for
13 employees' start and end times for every shift, including on-call shifts. This violates Labor Code §§
14 1174, 1174.5, and 1198 and IWC Wage Order 4-2001.

15 27. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum
16 and overtime wages earned, Plaintiff and Class Members have been deprived of wages in amounts to
17 be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest
18 thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194, and liquidated damages pursuant
19 to Labor Code § 1194.2.

20 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 4-2001)

28. Plaintiff incorporates paragraphs 1 through 27 of this Complaint as though fully set forth herein.

29. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 4-2001.

30. Defendants failed to pay proper premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Plaintiff and Class Members were completely denied the ability to take an off-duty 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. If Plaintiff and Class Members were able to take a rest period, they were late, interrupted, cut short, or on duty. These instances violate Labor Code § 226.7 and IWC Wage Order No. 4-2001.

31. Pursuant to Labor Code § 226.7 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation that he and Class Members are owed, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
5 (LABOR CODE §§ 226.7, 512, 1174, 1174.5, AND 1198 AND IWC WAGE ORDER 4-2001)

6 32. Plaintiff incorporates paragraphs 1 through 31 of this Complaint as though fully set
7 forth herein.

8 33. Plaintiff and Class Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
10 and 512 and IWC Wage Order 4-2001.

11 34. Defendants failed to pay proper premium wages to Plaintiff and other Class Members
12 who were denied proper meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage
13 Order 4-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a
14 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
15 second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours,
16 but were not paid premium wages of one hour's pay at the correct rate for each missed first or second
17 meal period. If they were able to take a meal period, they were late, cut short, or on-duty. This violates
18 Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001. Furthermore, as discussed above,
19 Defendants failed to maintain accurate records in accordance with Labor Code §§ 1174, 1174.5, and
20 1198 and IWC Wage Order 4-2001, including for employees' start and end times for meal periods.
21 This violates Labor Code §§ 1174, 1174.5, and 1198 and IWC Wage Order 4-2001.

22 35. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, Plaintiff
23 seeks the payment of all meal period compensation and unpaid wages that Class Members are owed
24 for four years preceding the filing of this Action, according to proof.

25 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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1 **VII.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

4 **FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES**

5 **(LABOR CODE § 2802)**

6 36. Plaintiff incorporates paragraphs 1 through 35 of this Complaint as though fully set
7 forth herein.

8 37. Pursuant to California Labor Code § 2802, Defendants must indemnify Plaintiff and
9 Class Members for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of their duties.

11 38. Plaintiff and Class Members were required to use their personal cell phones to perform
12 work for Defendants, but were not fully reimbursed by Defendants for these expenses.

13 39. As a proximate result of the aforementioned violations, Plaintiff and Class Members
14 have been damaged in an amount according to proof at the time of trial.

15 40. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover
16 from Defendants the full amount of the expenses they incurred in the performance of their job duties
17 that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

18 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

19 **VIII.**

20 **FIFTH CAUSE OF ACTION**

21 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

22 **FAILURE TO PROVIDE ACCESS TO PAYROLL RECORDS**

23 **(LABOR CODE §§ 226(c) AND 432)**

24 41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set
25 forth herein.

26 42. Labor Code § 226(c) requires employers to afford current and former employees the
27 right to inspect or receive a copy of their payroll records within 21 calendar days from the date of a
28 written or oral request.

43. Plaintiff requested to inspect or receive a copy of his payroll records by written request, but Defendants failed to timely provide him access. Plaintiff is informed and believes that Defendants failed to timely make the contents of payroll records available to other Class Members within the time required by statute.

44. Pursuant to Labor Code 226(f), Plaintiff and Class Members are entitled to recover a penalty in the amount of \$750 for each of Defendants' violation of Labor Code § 226(c).

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE ACCESS TO PAYROLL RECORDS

(LABOR CODE § 1198.5)

45. Plaintiff incorporates paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. Under Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

47. Under Labor Code § 1198.5(b), unless an extension is granted, the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request.

48. Plaintiff requested to inspect or receive a copy of his personnel records by written request, but Defendants failed to provide him access within the time frames of Labor Code § 1198.5. Plaintiff is informed and believes that Defendants failed to timely make the contents of personnel records available to other Class Members within the time required by statute.

49. Pursuant to Labor Code § 1198.5(k) and (l), Plaintiff and Class Members are entitled to recover a penalty in the amount of \$750 for each of Defendants' violations of Labor Code § 1198.5, plus injunctive relief.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT

PROVISIONS

(LABOR CODE § 226(a), (e))

50. Plaintiff incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (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 only 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

52. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiff and Class Members were not paid all wages earned, including all minimum wages, overtime wages, and premium meal and rest period wages due. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1) total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

53. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurately itemized wage statements, Plaintiff and Class Members have been injured because they are not able to ascertain all of the information required by Labor Code § 226(a). As a result, Plaintiff and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs, reasonable attorneys' fees, and injunctive relief, pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

XI.

EIGHTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203 AND 227.3)

54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

56. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due and owing for the entirety of their employment and were not paid all vacation wages owed. In addition, when Plaintiff left his employment with Defendants, he was

1 not paid all his accrued, but unused, vacation wages. This violates Labor Code §§ 201-202 and 227.3
2 and is alleged on behalf of Plaintiff and certain Class Members no longer employed by Defendants.

3 57. More than 30 days have passed since Plaintiff and Class Members have left
4 Defendants' employ.

5 58. As a consequence of Defendants' willful conduct in not paying wages owed timely
6 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
7 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
8 employment.

9 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

10 **XII.**

11 **NINTH CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 59. Plaintiff incorporates paragraphs 1 through 58 of this Complaint as though fully set
16 forth herein.

17 60. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and
18 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
19 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
21 and all Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
22 the meaning of Code of Civil Procedure § 1021.5.

23 61. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 62. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
27 practices.
28

1 63. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages and expense reimbursement due are fundamental public policies of this
3 State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
4 enforce vigorously minimum labor standards, to ensure that employees are not required or permitted
5 to work under substandard and unlawful conditions, and to protect law-abiding employers and its
6 employees from competitors who lower their costs by failing to comply with minimum labor
7 standards.

8 64. Defendants have violated statutes and public policies. Through the conduct alleged in
9 this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
10 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
11 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
12 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
13 guaranteed to all employees under law.

14 65. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
15 §17200 *et seq.* of the Business & Professions Code.

16 66. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
17 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
18 17200 *et seq.* of the Business & Professions Code.

19 67. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
20 similarly situated have been damaged in a sum as may be proven.

21 68. Unless restrained by this Court, Defendants will continue to engage in the unlawful
22 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
23 should make such orders or judgments, including the appointment of a receiver, as may be necessary
24 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
25 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
26 to, disgorgement of profits which may be necessary to restore Plaintiff and all Class Members to the
27 money Defendants have unlawfully failed to pay.

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XIII.

TENTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 201.3, 202, 204(d), 204b, 226(a), 226(c), 226.7, 227.3, 432.5, 512, 1174,
1174.5, 1194, 1198, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 210, 226.3, 558, AND 1198.5**

69. Plaintiff incorporates paragraphs 1 through 68 of this Complaint as though fully set forth herein.

70. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* against Defendants on behalf of all other non-exempt employees employed by Defendants between October 5, 2022, and the present (“Aggrieved Employees”).

71. Furthermore, Plaintiff also seeks civil penalties pursuant to PAGA on behalf of Aggrieved Employees due to Defendants’ failure to timely compensate Aggrieved Employees employed as security guards, in violation of Labor Code §§ 201.3(b)(6), 204(d), 204b, and 210. Labor Code § 201.3(b)(1)(A) states:

If an employee of a temporary services employer in the security services industry is a security guard who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, is employed by a private patrol operator licensed pursuant to that chapter, and is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any workweek, . . . shall be due and payable not later than the regular payday of the following workweek.

Aggrieved Employees were employed as security guards who were placed at various clients of Defendants in California. As a result of this arrangement, they were required to be paid their wages on a weekly basis. Defendants, however, failed to do so—instead, they paid Aggrieved Employees on a bi-weekly basis, and their wages were therefore issued far more than 7 days after the conclusion of the weekly pay period in which they worked. Defendants’ failure to timely pay wages also violates Labor Code §§ 204(d) and 204b, which requires that weekly paid employees be paid no later than

seven (7) days after the final day of each pay period. Labor Code § 210 authorizes additional penalties for violations of Labor Code §§ 201.3, 204(d) and 204b.

72. Furthermore, Aggrieved Employees were not timely paid all wages due during their employment, in violation of Labor Code §§ 204 and 210. Defendants paid Aggrieved Employees on a bi-weekly basis, but sometimes failed to issue them all their wages within seven calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d). Defendants would sometimes forget to pay Aggrieved Employees for all hours worked during a pay period. Defendants would wait until the next pay period to issue these owed wages to Aggrieved Employees. This subjects Defendants to penalties as authorized by Labor Code § 210.

73. For each such violation, Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 201.3, 202, 204(d), 204b, 226(a), 226(c), 226.7, 227.3, 432.5, 512, 1174, 1174.5, 1194, 1198, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 210, 226.3, 558, and 1198.5.

74. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

75. On October 5, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 et seq. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of October 5, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For liquidated damages, pursuant to Labor Code § 1194.2, in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
2. For compensatory damages, pursuant to Labor Code § 1194, in the amount of all unpaid overtime wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For injunctive relief pursuant to Labor Code § 226(h) for Plaintiff and Class Members;
6. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
7. For penalties pursuant to Labor Code § 226(f) for Plaintiff and Class Members;
8. For penalties and injunctive relief pursuant to Labor Code § 1198.5(k) and (l) for Plaintiff and Class Members;
9. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
10. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
11. An award of prejudgment and post-judgment interest;
12. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h), 1174.5, 1194, 1198, and other applicable law;

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1 13. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2802, and other
2 applicable law; and

3 14. Such other and further relief as this Court may deem just and proper.

4 Dated: January 16, 2024

Respectfully submitted,

5 GAINES LAW CORPORATION

6 By: 
7 _____
8 EVAN S. GAINES
 Attorneys for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

11 Dated: January 16, 2024

Respectfully submitted,

12 GAINES LAW CORPORATION

13 By: 
14 _____
15 EVAN S. GAINES
 Attorneys for Plaintiff