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Attorneys for JOHN BRYCE MALAVASI and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JOHN BRYCE MALAVASI, an individual; on behalf of himself and all others similarly situated and the general public,

Plaintiffs,

v.

INTEGRITY NEWSPAPERS, INC., a California corporation; DANIEL VERDUGO, an individual; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 30-2023-01366659-CU-OE-CXC
[Assigned for all purposes to: Hon. Layne H. Melzer, Dept. CX-102]

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Violation of B&PC §17200, et seq.
2. Violation of Labor Code §§ 204, 510, 1194 and 1198;
3. Violation of Labor Code §§ 200, et seq.;
4. Failure to Pay Meal and Rest Break Premiums at the Proper Regular Rate of Pay (Labor Code §226.7)
5. Failure to Provide & Maintain Accurate Wage Statements Pursuant to Labor Code §226;
6. Failure to Provide Meal Periods (Lab. Code §226.7);
7. Failure to Provide Rest Breaks (Lab. Code §226.7);
8. Violation of Labor Code §§2698-2699 (PAGA).

DEMAND FOR JURY TRIAL

1 Plaintiff JOHN BRYCE MALAVASI, on behalf of himself and all other persons
2 similarly situated, and the general public (hereinafter, "Plaintiffs"), hereby complain against
3 Defendants INTEGRITY NEWSPAPERS, INC., a California corporation ("Integrity"),
4 COMMUNITY MEDIA CORPORATION, a California corporation ("CMC"), SUN
5 NEWSPAPERS, INC., a California corporation ("Sun"), DANIEL VERDUGO, an individual
6 ("D. Verdugo"), and EDWARD VERDUGO, an individual ("E. Verdugo"); and DOES 1 to
7 100, inclusive (hereinafter Integrity, CMC, Sun, D. Verdugo, and E. Verdugo, and Does 1-100
8 are collectively referred to herein as "Defendants"), and on information and belief allege as
9 follows:

10 **GENERAL ALLEGATIONS**

11 **JURISDICTION**

12 1. This is a civil action seeking recovery of unpaid wages, waiting time penalties,
13 pay stub penalties and meal and rest period premiums under California Labor Code §§ 510,
14 1194 et seq., 201 et seq., 226 and 226.7. Plaintiffs bring an action for monetary damages for
15 failure to pay wages as well as for restitution for Defendants' violations of Business and
16 Professions Code (B&PC) §17200, et seq., including full restitution of all compensation
17 retained by Defendants as a result of their unlawful, fraudulent and unfair business practices.
18 Plaintiffs seek all available relief, including full restitution of all compensation retained by
19 Defendants as a result of their unlawful and unfair business practices. Further, Plaintiffs seek
20 injunctive relief under B&PC §17200, et seq.

21 **VENUE**

22 2. Venue as to each of the Defendants is proper in this judicial district pursuant to
23 California Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts
24 complained of herein occurred in the County of Orange. Each defendant either owns,
25 maintains offices, transacts business, has an agent or agents within the County of Orange, or
26 otherwise is found within the County of Orange, and each defendant is within the jurisdiction
27 of this Court for purposes of service of process.
28

PARTIES

3. Plaintiff John Bryce Malavasi (“Malavasi”) is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff Malavasi worked for Defendants within the State of California.

4. Plaintiffs are informed and believe and thereon allege that at all times mentioned herein, defendant Integrity, CMC and Sun are and were California corporations, and that defendants D. Verdugo and E. Verdugo are the owners of Integrity, CMC and Sun, and residents of California.

5. Plaintiffs are informed and believe and thereon allege that at all times mentioned herein, Defendants were authorized to do business in the State of California, County of Orange, and in the newspaper industry. Thus, each named defendant and DOES 1 to 100 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code, as hereinafter alleged.

6. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of defendants sued herein as DOES 1 to 100, inclusive, and for that reason, those defendants are sued under such fictitious names, and Plaintiffs will seek from this Court leave to amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed and believe and thereon allege that each of the Defendants and each fictitious defendant, whether individual, partners, or corporate, was responsible in some manner for the circumstances alleged herein, and proximately caused Plaintiffs and all others similarly situated hereinafter alleged and the general public to be subjected to the unlawful employment practices, wrongs, injuries and damages complained of herein.

7. At all times herein mentioned, each of the Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Plaintiffs

1 herein allege that Defendants and each of them is the joint employer of Plaintiffs and the
2 classes.

3 8. At all times mentioned herein, Defendants, and each of them, were members of
4 and engaged in a joint venture, partnership, and common enterprise, and acting within the
5 course and scope of and in pursuance of said joint venture, partnership, and common
6 enterprise.

7 9. At all times herein mentioned, the acts and omissions of various Defendants,
8 and each of them, concurred and contributed to the various acts and omissions of each and
9 every one of the other Defendants in proximately causing the complaints, injuries and
10 damages alleged herein.

11 10. At all times herein mentioned, Defendants, and each of them, approved of,
12 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
13 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the
14 acts and omissions of each and every one of the other Defendants, thereby proximately
15 causing the damages, as herein alleged.

16 11. The California Superior Court also has jurisdiction in this matter because both
17 the individual and aggregate monetary damages and restitution sought herein exceed the
18 minimal jurisdictional limits of the Superior Court and will be established at trial, according to
19 proof. The California Superior Court also has jurisdiction in this matter because Plaintiffs and
20 the putative classes herein worked within the State of California, and were subject to
21 California's wage and hour laws.

22 **PLAINTIFF CLASSES**

23 12. The class representative Plaintiffs who worked in the position of hourly non-
24 exempt employees or other similar titles while employed by Defendants within the State of
25 California, are as follows:

26 a. John Bryce Malavasi

27 Plaintiff Malavasi has worked within California as a non-exempt employee during the
28 relevant period of time covered in this lawsuit.

1 13. At all times mentioned herein, Plaintiffs and the entirety of the Class identified
2 herein are current and former employees of Defendants who were not properly paid all of their
3 wages, including but not limited to, proper premium overtime, and/or double time due to
4 Defendants' failure to properly calculate the regular rate and/or include all hours worked in a
5 week to determine hours over eight (8) in a given day, or forty (40) in a week.

6 **CLASS ACTION ALLEGATIONS**

7 14. Plaintiffs bring this action on behalf of themselves and all others similarly
8 situated as a class action pursuant to CCP §382. The Classes which Plaintiffs seek to
9 represent are composed of and defined as follows:

10 **Class 1:**

11 All non-exempt hourly employees and/or employees misclassified as exempt who
12 worked for Defendants in California from 2019 through the date of judgment, who were not
13 paid premium overtime and/or double time at the employee's regular rate of pay.

14 **Subclass 1:**

15 All non-exempt hourly employees and/or employees misclassified as exempt who
16 worked for Defendants in California who were paid for a missed meal or rest period at an
17 allegedly "reduced" rate of pay from 2019 through the date of judgment (Meal and Rest
18 Reduced Rate Subclass);

19 **Class 2:**

20 All non-exempt hourly employees and/or employees misclassified as exempt who
21 worked for Defendants in California from 2019 through the date of judgment, who were not
22 paid the minimum wage for all hours worked (Minimum Wage Class);

23 **Class 3:**

24 All non-exempt hourly employees and/or employees misclassified as exempt who
25 worked for Defendants in California and who worked at some point from 2020 through the
26 present, who are no longer employed with Defendants and to whom Defendants willfully
27 failed to pay all wages due upon separation from Defendants (Waiting Time Penalty Class);

28 **Class 4:**

1 All non-exempt hourly employees and/or employees misclassified as exempt who
2 worked for Defendants in California from 2019 to the present who were not provided legally
3 compliant meal periods (Meal Break Class);

4 **Class 5:**

5 All non-exempt hourly employees and/or employees misclassified as exempt who
6 worked for Defendants in California from 2019 through the present who were not provided
7 legally-compliant rest breaks (Rest Break Class);

8 **Class 6:**

9 All non-exempt hourly employees and/or employees misclassified as exempt who
10 worked for Defendants in California from 2022 through the present who were provided a
11 paystub (a.k.a. wage statement) which failed to list all hours actually worked and wages owed
12 (Pay Stub Class).

13 The members of the classes are so numerous that joinder of all members would be
14 unfeasible and not practicable. The membership of the classes are unknown to Plaintiffs at
15 this time; however, it is estimated that the classes number greater than 100 individuals. The
16 identity of such membership is readily ascertainable via inspection of Defendants'
17 employment records.

18 15. There are common questions of law and fact as to Plaintiffs and all others
19 similarly situated which predominate over questions affecting only individual members
20 including, without limitation to:

- 21 i. Whether Defendants paid their employees proper premium overtime
22 and/or double time at the employees' regular rate for hours over eight
23 (8) in a day and/or forty (40) hours in a week, in paying their hourly
24 non-exempt employees;
- 25 ii. Whether Defendants violated the applicable Labor Code provisions
26 including §510, 1194, and 203 by requiring substantial overtime work
27 and not paying for said work according to the overtime laws of the
28 State of California;

- iii. Whether Defendants failed to pay the appropriate premium overtime compensation to the class members;
- iv. Whether Defendants improperly retained, appropriated or deprived Plaintiffs and the class members of the use of monies or sums to which Plaintiffs and the class were legally entitled;
- v. Whether Defendants engaged in unfair business practices;
- vi. Whether Defendants, and each of them, were participants in the alleged unlawful conduct;
- vii. Whether Defendants' conduct was willful or reckless;
- viii. The effect upon and the extent of injuries suffered by Plaintiffs and all others similarly situated and the appropriate amount of compensation;
- ix. The appropriate amount of monetary penalties allowed by Labor Code §201, et. seq.;
- x. Whether Defendants pay and continue to pay for missed meal and rest period premiums at an allegedly "reduced" rate of pay in violation of Section 11 of the applicable Wage Orders;
- xi. Whether Defendants violated Labor Code §226 and relevant IWC Wage Orders by failing to, among other violations, accurately report total hours worked, premium payments for meal and rest periods, all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly work, by Plaintiffs and the members of the Class; and
- xii. Whether Defendants knowingly and intentionally failed to maintain records for Plaintiffs and members of the Class as required by Labor Code § 1174 and the applicable IWC Wage Orders.

16. Plaintiffs' claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiffs, as representative parties, will fairly and adequately

1 protect the interest of the classes by vigorously pursuing this suit through their attorneys who
2 are skilled and experienced in handling matters of this type. Plaintiffs have no claim or
3 interest that is antagonistic to any class member.

4 17. The nature of this action and the nature of laws available to the members of the
5 classes and subclasses identified herein make use of the class action format a particularly
6 efficient and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein.
7 Further, this claim involves large corporate employers, and a large number of individual
8 employees (Plaintiffs and all others similarly situated) with many relatively small claims with
9 common issues of law and fact. If each employee were required to file an individual lawsuit,
10 the corporate defendants would necessarily gain an unconscionable advantage since they
11 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
12 their vastly superior financial and legal resources. Requiring each class member to pursue an
13 individual remedy would also discourage the assertion of lawful claims by employees who
14 would be disinclined to pursue an action against their present and/or former employer for an
15 appreciable and justifiable fear of retaliation and permanent damage to their careers at present
16 and/or subsequent employment. Proof of a common business practice or factual pattern, of
17 which the Plaintiffs experienced, is representative of the class mentioned herein and will
18 establish the right of each of the members of the named class to recovery on the causes of
19 action alleged herein.

20 18. The prosecution of separate actions by the individual class members, even if
21 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
22 with respect to the individual class members against Defendants herein; and which would
23 establish potentially incompatible standards of conduct for Defendants; and/or (b) legal
24 determinations with respect to individual class members which would, as a practical matter,
25 be dispositive of the interest of the other class members not parties to adjudications or which
26 would substantially impair or impede the ability of the class members to protect their interests.
27 Further, the claims of the individual members of the class are not sufficiently large to warrant
28

1 vigorous individual prosecution considering all of the concomitant costs and expenses
2 attending thereto.

3 19. Plaintiffs and all others similarly situated are entitled to the wages and other
4 monies unlawfully withheld. This action is brought for the benefit of the public.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of B&PC §17200, et seq.)**

7 20. Plaintiffs re-allege and incorporate by reference herein the allegations of all
8 preceding paragraphs as though fully set forth herein.

9 21. Beginning on an exact date unknown to Plaintiffs but believed to have
10 occurred from 2019 on, Defendants have engaged in a pattern and practice of acts of unfair
11 competition in violation of B&PC §17200, including the practices alleged herein.

12 22. Defendants, and each of them, publish local newspapers and periodicals within
13 California, and have engaged in the practice of paying their employees in a fashion that
14 circumvents California's wage and hour laws.

15 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

16 23. Plaintiffs are informed and believe and thereon allege that as part of
17 Defendants' ongoing unfair business practices, Defendants' employees worked in excess of
18 eight (8) hours per day, and in excess of forty (40) hours per week without receiving the
19 proper regular rate of pay and/or minimum wage rate because Defendants misclassify
20 Plaintiffs as exempt, and otherwise cap Plaintiffs hours to avoid paying all hours worked.
21 Defendants are therefore in violation of Labor Code §§ 510 and 1194, and the relevant
22 California Industrial Welfare Commission Orders.

23 24. Defendants, and each of them, consistently administered a corporate policy
24 regarding time worked over 8 in a day and 40 during the week, which required that employees
25 work overtime without proper premium overtime pay, the regular rate of pay, and/or
26 minimum wage. This corporate policy and pattern of conduct is accomplished with the
27 advanced knowledge and designed intent to avoid paying employees for all hours worked.
28 Accordingly, Plaintiffs and the class members are entitled to all unpaid wages due under

1 California law. Further, Plaintiffs and the class are entitled to restitution of these wages
2 obtained by Defendants, and each of them.

3 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

4 25. Plaintiffs are informed and believe and thereon allege that as part of
5 Defendants' ongoing unfair business practices, Defendants failed to provide all employees all
6 wages at the time of their separation in violation of Labor Code § 200, et. seq., including but
7 not limited to, §§201, 202, 203 & 204.

8 26. Labor Code § 200, et seq. provides that an employer is required to pay an
9 employee all wages (including accrued vacation) immediately upon the employee's
10 involuntary separation from employment; immediately upon his or her voluntary separation if
11 the employee gave at least seventy-two (72) hours notice, and within seventy-two (72) hours,
12 if the employee voluntarily separated, but did not give at least seventy-two (72) hours notice.

13 27. Plaintiffs are informed and believe and thereon allege that all employees who
14 have been separated from Defendants did not timely receive a final paycheck detailing the
15 proper amount of pay from Defendants in violation of Labor Code § 200, et. seq.

16 28. Pursuant to Labor Code § 200, et seq. employees that no longer work for
17 Defendants, and who were not timely paid, are entitled to one (1) day of pay in penalties for
18 each day that he or she was paid late, until payment was made, up to a maximum of thirty (30)
19 days.

20 **VIOLATION OF MEAL AND REST PERIOD PROVISIONS**

21 29. Defendants' improper meal and rest period policies are in violation of
22 California law including, but not limited to Labor Code § 226.7, 512, and the applicable IWC
23 Wage Orders. Plaintiffs and the class were entitled to 1 hour of pay for each meal and rest
24 break violation at their regular rate of pay. Defendants failed and continue to fail to pay for
25 meal and rest period violations at the employees' regular rate of pay in violation of Section 11
26 of the applicable Wage Orders.

27 30. Plaintiffs seek restitution and injunctive relief for said violations.
28

1 31. Plaintiffs are informed and believe and thereon allege that at all times herein
2 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
3 prohibited by California B&PC §17200, thereby depriving their employees and the putative
4 class the minimum working standards and conditions due to them under the California labor
5 laws and Industrial Welfare Commission wage orders as specifically described herein.
6 Plaintiffs seek an injunction preventing Defendants from continuing their unfair business
7 practice of improperly depriving their employees of overtime pay, and payment of their
8 regular rate of pay for meal and rest period premiums. Plaintiffs further seek an order
9 requiring Defendants to identify by full name, telephone number, and last known address
10 employees who worked or still work for Defendants between 2019 through the date of
11 judgment; Plaintiffs further seek an order requiring Defendants to timely pay restitution to all
12 current and former employees, including back wages, premium payments, and interest.

13 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

14 32. Plaintiffs are informed and believe and thereon allege that as part of
15 Defendants' ongoing unfair business practices, Defendants, and each of them, fail to provide
16 their employees with proper and understandable itemized wage statements, as required by
17 Labor Code § 226.

18 33. Plaintiffs are informed and believe, and thereon allege, that Defendants, and
19 each of them, fail to provide each employee with an itemized statement which states the actual
20 regular rate paid, the total hours worked by the employee, the gross and net wages earned, and
21 all applicable hourly rates in effect during the pay period and the corresponding number of
22 hours worked at each hourly rate by the employee, premium wages for meal and rest periods,
23 and other items required by Labor Code section 226.

24 **SECOND CAUSE OF ACTION**

25 **RECOVERY OF UNPAID WAGES & PENALTIES**

26 **(Violation of Labor Code §§ 204, 510, 1194 and 1198)**

27 34. Plaintiffs re-allege and incorporate by reference herein the allegations of all
28 preceding paragraphs as though fully set forth herein.

1 35. Plaintiffs and all others similarly situated identified herein were and are
2 employed and scheduled as a matter of established company policy to work and in fact
3 worked as non-exempt hourly employees and/or misclassified employees in excess of eight
4 (8) hours per day and/or in excess of forty (40) hours per week. Defendants employed and
5 scheduled all employees without providing overtime compensation for such excess hours
6 worked in violation of Labor Code §§ 510 and 1194 and the relevant California Industrial
7 Welfare Commission (IWC) orders. Labor Code § 204 establishes the fundamental right of
8 all employees in the State of California to be paid the proper amount of wages in a timely
9 fashion for their work, including overtime. Defendants always had a written and verbal
10 agreement to pay overtime and double time based on the Plaintiffs' and classes' regular rate of
11 pay.

12 36. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiffs may bring a civil action
13 for overtime wages directly against the employer without first filing a claim with the Division
14 of Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages, together
15 with interest thereon, penalties, attorneys' fees and costs.

16 37. At all times relevant hereto, Defendants have failed to pay to Plaintiffs and all
17 persons similarly situated wages when due as required by Labor Code § 204.

18 38. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer
19 than the hours set by the IWC or under conditions prohibited by the applicable IWC Wage
20 Orders.

21 39. At all times relevant hereto, Defendants have willfully violated the Labor Code
22 with respect to meeting the requirements of paying one (1) regular rate of pay and calculating
23 overtime and double time based on that regular rate, as herein before alleged. Defendants
24 have failed to properly pay premium overtime for hours worked in a week, and as such,
25 Defendants are able to reduce their overhead and operating expenses and gain an unfair
26 advantage over competing companies complying with state law. Furthermore, Defendants
27 have failed to include all items of remuneration when determining the employees' regular rate
28 of pay, including commissions and other non-discretionary compensation.

1 40. Plaintiffs are informed and believe and thereon allege that Defendants
2 consistently administered a corporate policy regarding both staffing levels and duties and
3 responsibilities of the members of the classes which required the entirety of all classes to work
4 overtime without proper premium pay, and to fail all wages for hours worked. This corporate
5 policy and pattern of conduct was/is accomplished with the advance knowledge and design of
6 all Defendants herein. Thus, Plaintiffs and all others similarly situated routinely, regularly
7 and customarily performed overtime work and/or work that they failed to be compensated at
8 the appropriate hourly wage.

9 41. Plaintiffs are informed and believe and thereon allege that the obligations and
10 responsibilities of the class employees are irrelevant because Plaintiffs and all others similarly
11 situated merely allege wrongdoing with Defendants' pay plans, policies and practices.
12 Further, the duties of Plaintiffs and all others similarly situated are not relevant in certifying
13 any of the classes.

14 42. Defendants, and each of them, had a consistent and uniform policy, practice
15 and procedure of willfully failing to pay the earned and unpaid wages of all class members.
16 Defendants have willfully failed to pay the earned and unpaid wages of such individuals,
17 including, but not limited to regular pay, premium pay, and other wages earned and remaining
18 uncompensated according to amendment, or proof.

19 43. The pattern, practice and uniform administration of corporate policy regarding
20 illegal employee compensation as described herein is unlawful and creates an entitlement to
21 recovery by Plaintiffs and all others similarly situated, in a civil action, for the unpaid balance
22 of the full amount of all wages owing, including the proper calculation of the regular rate and
23 the proper overtime premiums calculated at 1.5 or 2 times the legal regular rate which are
24 owing, including interest thereon, willful penalties, reasonable attorneys' fees, and costs of
25 suit according to the mandate of Labor Code § 1194, et. seq.

26 44. Likewise, Defendants have a pattern, practice and uniform administration of
27 corporate policy regarding failure to comply with the required provisions of Labor Code §
28

226.7, in failing to pay Plaintiffs and the class the meal and rest period premium payments at the regular rate.

THIRD CAUSE OF ACTION

(Violation of Labor Code §§ 200, et. seq.)

45. Plaintiffs re-allege and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

46. Labor Code §§ 200, et. seq., provides that an employer is required to pay an employee all wages (including accrued vacation) immediately upon an employee's involuntary separation from employment; immediately upon her voluntary separation if the employee gave at least seventy two (72) hours notice, and within seventy two (72) hours, if the employee voluntarily separated, but did not give at least seventy two (72) hours notice.

47. Plaintiffs are informed and believe, and thereon allege, that former employees of Defendants employed in the State of California separated from employment with Defendants, and did not timely receive a final pay check with all of their wages due from Defendants in violation of Labor Code §§ 200, et seq.

48. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer works for Defendants, and who was not timely paid all of his or her wages due is entitled to one (1) day of pay in penalties for each day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MEAL AND REST PERIOD PREMIUMS AT THE PROPER

REGULAR RATE OF PAY

(Violation of Labor Code §§ 226.7 & 512, et seq.)

49. Plaintiffs re-allege and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

50. Plaintiffs believe and thereon allege that Labor Code §226.7 requires an employer to pay an additional hour of compensation at the employee's regular rate of pay for each meal period and rest period violation. During the class period, Plaintiffs are informed

1 and believe, and based thereon allege that Defendants have failed to pay Plaintiffs and the
2 class members meal period and rest period premium pay at their regular rate of pay.
3 Defendants' improper meal and rest period practices and policies are in violation of California
4 law including, but not limited to Labor Code § § 226.7, 512, and the IWC Wage Orders.

5 51. Pursuant to Labor Code §226.7, Plaintiffs are entitled to damages in an amount
6 equal to one (1) hour of the employee's regular rate of pay per each meal and rest period
7 violation, in a sum to be proven at trial.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

10 **(Violation of Labor Code § 226)**

11 52. Plaintiffs re-allege and incorporate by reference herein the allegations of all
12 preceding paragraphs as though fully set forth herein.

13 53. Labor Code §226(a) provides, in pertinent part:

14 An employer, semimonthly or at the time of each payment of wages, shall
15 furnish to his or her employee, either as a detachable part of the check, draft, or
16 voucher paying the employee's wages, or separately if wages are paid by
17 personal check or cash, an accurate itemized statement in writing showing (1)
18 gross wages earned, (2) total hours worked by the employee, except as
19 provided in subdivision (j), (3) the number of piece-rate units earned and any
20 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
21 deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item, (5) net wages earned, (6)
23 the inclusive dates of the period for which the employee is paid, (7) the name
24 of the employee and only the last four digits of his or her social security
25 number or an employee identification number other than a social security
26 number, (8) the name and address of the legal entity that is the employer and, if
27 the employer is a farm labor contractor, as defined in subdivision (b) of Section
28 1682, the name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay period and
the corresponding number of hours worked at each hourly rate by the
employee. . . .

54. During the Class Period, Defendants knowingly and intentionally failed to
provide the Class Members, including Plaintiff Malavasi, with timely and accurate wage and
hour statements showing gross wages earned, total hours worked, all deductions made, net

1 wages earned, the name and address of the legal entity employing that Class Member, meal
2 and rest period premium payments, and all applicable hourly rates in effect during each pay
3 period and the corresponding number of hours worked at each hourly rate by that Class
4 Member.

5 55. The Class Members, including Plaintiffs, suffered injury as a result of
6 Defendants' knowing and intentional failure to provide the Class Members, with the wage and
7 hour statements required by law.

8 56. Based on Defendants' conduct as alleged herein, Defendants are liable for actual
9 damages, statutory damages and/or statutory penalties pursuant to California Labor Code §
10 226, attorney's fees and costs and other applicable provisions of the Labor Code and
11 applicable Wage Order.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Violation of Labor Code §§ 226.7 and 512)**

15 57. Plaintiffs re-allege and incorporate by reference herein the allegations of all
16 preceding paragraphs as though fully set forth herein.

17 58. California Labor Code § 512 and IWC Wage Orders state that an employer
18 may not employ an employee for a work period of more than five (5) hours per day without
19 providing the employee a meal period of not less than 30 minutes, and an employer may not
20 employ an employee for a work period of more than 10 hours per day without providing the
21 employee with a second meal period of not less than 30 minutes. Unless the employee is
22 relieved of all duty during a 30-minute meal period, the meal period shall be considered an
23 "on duty" meal period and counted as time worked. California Labor Code § 226.7(a) further
24 states that no employer shall require any employee to work during any meal or rest period
25 mandated by an applicable order of the IWC.

26 59. Employers are prohibited from exerting coercion against the taking of, creating
27 incentives to forego, or otherwise encouraging the skipping of legally protected breaks.
28

1 60. Plaintiffs and members of the Class were not provided with or given the
2 opportunity to take the requisite meal periods before the end of the first 5 hours of work, nor
3 were they provided with or given the opportunity to take a proper second meal period during
4 the days when they worked more than 10 hours in a day. Defendants coerced Plaintiffs and
5 the members of the Class to forego meal periods by disciplining and/or threatening
6 disciplinary action against them if they attempted to take meal periods, created incentives to
7 forego meal breaks, and encouraged the skipping of meal periods by scheduling work to
8 coincide with the meal periods, among other things. In addition, Defendants placed
9 unnecessarily tight timelines on Plaintiffs' work, forcing them to miss their meal periods in
10 order to complete their jobs. As a result, Plaintiffs and members of the Class were required to
11 work and/or were not relieved of all duties during any meal period taken, and thus were
12 considered "on duty;" however, Defendants failed to count as time worked any "on duty"
13 meal period taken by Plaintiffs and the members of the Class.

14 61. Pursuant to California Labor Code § 226.7(c) and IWC Wage Orders, if an
15 employer fails to provide an employee a meal period in accordance with the applicable
16 provisions of the IWC Wage Orders, the employer shall pay the employee one (1) hour of pay
17 at the employee's regular rate of pay for each workday that the meal period is not provided.
18 As such, Plaintiffs and members of the Class are entitled to an additional one hour's pay for
19 each day in which Plaintiffs and members of the Class were not provided a proper meal break
20 under the above-described authorities.

21 62. Plaintiffs and the members of the Class request that the Court award interest on
22 all unpaid wages at the legal rate specified by California Civil Code § 3289(b), accruing from
23 the date the wages were due and payable pursuant to Labor Code § 218.6.

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS**

26 **(Violation of Labor Code § 226.7)**

27 63. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the
28 allegations of the preceding paragraphs.

1 64. The applicable IWC Wage Orders state that every employer shall authorize and
2 permit all employees to take rest periods. The authorized rest period time shall be based on
3 the total hours worked daily at the rate of ten (10) minutes net rest time per four hours of
4 work, or major fraction thereof. An employer must provide employees with 10 minutes' rest
5 for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six
6 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.

7 65. Plaintiffs and Class Members were not permitted to take rest periods, were
8 required to work during their rest periods, were on-call during their rest periods, and/or were
9 disciplined and/or were advised that they would be disciplined if they took rest periods during
10 work hours, in contravention of California law.

11 66. Pursuant to California Labor Code § 226.7(c) and the applicable IWC Wage
12 Orders, if an employer fails to provide an employee a rest period in accordance with the
13 applicable IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at the
14 employee's regular rate of compensation for each workday that the rest period is not provided.

15 67. As such, Plaintiffs and the Class members are entitled to an additional one
16 hour's pay for each day in which they were not provided a proper rest period under the above-
17 described authorities.

18 68. Plaintiffs and the members of the Class request that the Court award interest on
19 all unpaid wages at the legal rate specified by California Civil Code § 3289(b), accruing from
20 the date the wages were due and payable pursuant to Labor Code § 218.6.

21 **EIGHTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **(Violation of Labor Code §§ 2698 and 2699)**

24 69. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the
25 allegations of the preceding paragraphs.

26 70. On or about October 3, 2023, prior class representative Aaron Hills provided
27 written notice, on behalf of himself and all other aggrieved employees, which included
28 Plaintiff Malavasi, to the Labor and Workforce Development Agency ("LWDA") and

1 Defendants of the specific provisions of the Labor Code alleged to have been violated,
2 including the facts and theories to support the alleged violations.

3 71. The LWDA failed to respond to Plaintiffs' counsel's correspondence and failed
4 to notify Plaintiffs' counsel as to whether it would investigate the allegations contained
5 therein, within the time period requirements of the Private Attorneys General Act (PAGA),
6 under Labor Code §2699.3. Plaintiffs have fully complied with the notice requirements set
7 forth in Labor Code §2699.3 in order to commence a civil action against an employer
8 pursuant to Labor Code §2699.

9 72. Defendants' failure to pay Plaintiffs for all hours worked, minimum wages,
10 overtime compensation, failure to provide meal periods, failure to authorize and permit rest
11 periods, failure to pay all wages upon termination or resignation, and failure to provide
12 accurate itemized wage statements, will subject Defendants to civil penalties pursuant to,
13 without limitation, Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 551, 552, 1174, 1194,
14 1198, and IWC Wage Orders.

15 73. Plaintiffs are aggrieved employees as defined in Labor Code §§2699(a) and
16 (c), and related Labor Code provisions. Plaintiffs bring this cause of action on behalf of
17 themselves, as private attorneys general, and in a representative capacity on behalf of other
18 aggrieved employees, affected by the labor law violations alleged herein.

19 74. Defendants committed numerous violations of the California Labor Code and
20 IWC Wage Orders against the Plaintiffs, and on information and belief, against members of
21 the Class and other current and former employees while they were employed by Defendants,
22 including but not limited to:

23 a. Defendants violated Labor Code §§ 510, 511, 1194 and/or IWC Wage
24 Orders by failing to pay Plaintiffs and the members of the Class, and on information and
25 belief, other current and former employees of Defendants, all minimum, straight time and
26 overtime wages owed in compliance with California law;
27
28

1 b. Defendants violated Labor Code §§ 226.7, 510, 1194, 1197 and/or IWC
2 Wage Orders by failing to pay Plaintiffs and the members of the Class by failing to pay for a
3 missed meal or rest period at the regular rate of pay;

4 c. Defendants violated Labor Code §§ 1194, 1197 and/or IWC Wage
5 Orders by failing to pay Plaintiffs and the members of the Class, and on information and
6 belief, other current and former employees of Defendants, all minimum wages owed in
7 compliance with California law;

8 d. Defendants violated Labor Code §§ 1194, 204, 510, 511 and/or IWC
9 Wage Orders by failing to pay Plaintiffs and the members of the Class, and on information
10 and belief, other current and former employees of Defendants, all wages owed in a timely
11 manner in compliance with California law;

12 e. Defendants violated Labor Code § 226.7, 512, and /or IWC Wage
13 Orders by failing to provide Plaintiffs and the members of the Class, and on information and
14 belief, other current and former employees of Defendants, the opportunity to take the requisite
15 meal periods in compliance with California law;

16 f. Defendants violated Labor Code § 226.7 and/or IWC Wage Orders by
17 failing to authorize and permit Plaintiffs and the members of the Class, and on information
18 and belief, other current and former employees of Defendants, the opportunity to take the
19 requisite rest periods in compliance with California law;

20 g. Defendants violated Labor Code §§ 226, 1174 and/or IWC Wage
21 Orders by failing to properly maintain accurate employment time and records, maintain and/or
22 submit accurate itemized wage statements on behalf of Plaintiffs, members of the Class, and
23 on information and belief, on behalf of other current and former employees of Defendants as
24 described herein; and

25 h. Defendants violated Labor Code §§ 201, 202 and/or IWC Wage Orders
26 by failing to pay Plaintiffs, the Class, and on information and belief, other current and former
27 employees of Defendants as described herein.

28 75. Pursuant to Labor Code § 2699, Plaintiffs, members of the Class, and all other

aggrieved current and former employees seek to recover civil penalties, as otherwise provided by statute and wage order, for which Defendants are liable as a result of their violations of the California Labor Code and applicable wage order(s) in an amount to be proven at trial. These penalties include, but are not limited to, those provided by Labor Code §§ 201, 202, 203, 204, 210, 221, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1197, 2699, and IWC Wage Orders. Plaintiffs and aggrieved current and former employees further seek and award of reasonable attorneys' fees and costs pursuant to Labor Code § 2698 and 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That the Court determine this action may be maintained as a class action;

As to the First Cause of Action:

2. For an order preliminarily and permanently enjoining Defendants from engaging in the practices challenged herein;

3. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendants by means of the unfair practices complained of herein. Plaintiffs seek, on behalf of the putative class, the appointment of a receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor Code §§ 201, 202, 510 and 1194, and interest, and attorneys' fees as a result of the unfair business practices;

4. For an order finding and declaring that Defendants' acts and practices as challenged herein are unlawful, and unfair and/or fraudulent;

5. For an accounting, under administration of Plaintiffs and subject to court supervision, to determine the amount to be returned by Defendants and the amounts to be refunded to members who are or were not paid all their wages due to Defendants' unfair business practices;

6. For the creation of an administrative process wherein each injured current and former employee receives his or her back wages in the form of overtime pay or alternatively

1 that each current or former eligible employee may submit a claim in order to receive his/her
2 money;

3 7. For an order requiring Defendants to make full restitution and payment
4 pursuant to B&PC §§ 17200, et seq.;

5 8. For all other appropriate declaratory and equitable relief;

6 9. For pre-judgment interest to the extent permitted by law;

7 10. For an order requiring Defendants to identify, by name, address and telephone
8 number of each person who worked in California as an hourly non-exempt employee for
9 Defendants between 2019 through the time of judgment;

10 11. For an order imposing all civil and statutory penalties provided by law.

11 **As to the Second and Fourth Cause of Action:**

12 12. For damages according to proof, as set forth in Labor Code §§ 510, 226.7 and
13 1194, et seq., (and the applicable California Industrial Welfare Commission wage orders)
14 regarding wages due and owing;

15 13. For pre-judgment interest as allowed by Labor Code § 1194 and California
16 Civil Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for
17 reasonable attorneys' fees;

18 14. For an order imposing all civil and statutory penalties provided by law.

19 **As to the Third Cause of Action:**

20 15. For waiting time penalties for all former employees not timely paid their last
21 pay check, including vacation pay;

22 16. For reasonable attorneys' fees and costs;

23 17. For an order imposing all civil and statutory penalties provided by law.

24 **As to the Fifth Cause of Action:**

25 18. For recovery as authorized by Labor Code §226(e);

26 19. For injunctive relief to ensure Defendants' compliance with Labor Code §226
27 and the IWC Wage Orders §7(A) pursuant to Labor Code §226(h);
28

20. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or §226(h);

21. For an order imposing all civil and statutory penalties provided by law.

As to the Sixth Cause of Action:

22. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a meal period was not provided, impeded, discouraged and/or dissuaded;

23. For an order imposing all civil and statutory penalties provided by law.

As to the Seventh Cause of Action:

24. One (1) hour of pay at each of the employees' regular rate of compensation for each workday that a rest period was not authorized or permitted, or impeded, interrupted, discouraged and/or dissuaded;

25. For an order imposing all civil and statutory penalties provided by law.

As to the Eighth Cause of Action:

26. That the Court declare, adjudge and decree that Defendants violated California Private Attorneys General Act, Labor Code § 2698 and 2699;

27. For an order imposing all civil and statutory penalties provided by law;

28. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 2699(g); and

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

As to All Causes of Action:

30. For reasonable costs incurred;

31. For such other and further relief as this Court may deem just and proper.

Dated: July 3, 2025

BARTZ LAW GROUP, APC

By: /s/ Aaron A. Bartz
AARON A. BARTZ
Attorneys for Plaintiff John Bryce Malavasi and
all others similarly situated

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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues triable to a jury.

Dated: July 3, 2025

BARTZ LAW GROUP, APC

By: /s/ Aaron A. Bartz
AARON A. BARTZ
Attorneys for Plaintiff John Bryce Malavasi and
all others similarly situated

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On July 3, 2025, I served true copies of the foregoing documents described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action, addressed as follows:

Attorneys for Defendant

Co-Counsel for Defendant

Co-Counsel for Plaintiff

(X) BY ELECTRONIC TRANSMISSION: I transmitted a PDF version of this document by electronic mail to the party(s) identified on the above service list using the e-mail address(es) indicated.

/s/ Leanne Nguyen-Phuoc/s/
Leanne Nguyen-Phuoc