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Attorneys for Plaintiff,
ROBERTO FERNANDO EQUILA SUAR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ROBERTO FERNANDO EQUILA
SUAR, an individual, on his own behalf
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

UNIVERSAL ART GALLERY, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 23ST CV 28754

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE (Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198);**
- 2. FAILURE TO PAY MINIMUM WAGES
DUE (Cal. *Labor Code* §§ 1194, 1197,
1197.1, 1198);**
- 3. FAILURE TO PROVIDE REST
PERIODS (Cal. *Labor Code* § 226.7);**
- 4. FAILURE TO MAINTAIN RECORDS
AND PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS (Cal. *Labor Code*
§226);**
- 5. FAILURE TO PAY WAGES ON
TERMINATION AND/OR
RESIGNATION (Cal. *Labor Code* §§201-
203);**
- 6. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. *Labor Code* §2802);**
- 7. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor Code*
§1198.5); and**
- 8. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 *et seq.*)**

DEMAND FOR A JURY TRIAL

1 All allegations in this Complaint are based upon information and belief except for those
2 allegations which pertain to the Plaintiff named herein and his counsel. Each allegation has
3 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
4 further investigation and discovery.

5 ROBERTO FERNANDO EQUILA SUAR ("Plaintiff") alleges the following:

6 1. This is a class action brought under California law by an individual who was
7 employed by Universal Art Gallery, Inc. (along with DOES 1 through 100, collectively
8 "Defendant"). Plaintiff brings this action on behalf of himself and others similarly situated to
9 recover wages from Defendant due to Defendant's systematic failure to pay overtime,
10 minimum wage, failure to provide rest breaks (or pay the statutory compensation due), failure
11 to maintain records and to provide accurate itemized wage statements, failure to pay wages on
12 termination and/or resignation, failure to reimburse business expenses, and failure to allow
13 inspection of employment records.

14 2. Plaintiff has worked as an employee for Defendant's art gallery in Venice,
15 California since on or about November 8, 2021 and until April 28, 2023, when he was
16 terminated. While working, Plaintiff and members of the Class have been forced to endure
17 stressful and illegal workplace conditions created by Defendant's efforts to maximize profits
18 and tightly control labor costs.

19 3. Plaintiff, like his co-workers whom Defendant also employed during the
20 applicable limitations period, spend their workdays doing Fitting and in non-exempt hourly
21 employee positions, under illegal and highly regimented circumstances. That regimen results
22 from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
23 accomplishes by not paying for all labor costs by failing to: pay overtime, minimum wage, to
24 provide rest breaks (or pay the statutory compensation due), to maintain records and to provide
25 accurate itemized wage statements, to pay wages on termination and/or resignation, to
26 reimburse business expenses, allow inspection of employment records and by using other
27 unlawful stratagems to ensure that labor costs remain artificially low.

4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, premium overtime wages, minimum wages, missed rest break wages, wages due to discharged or quitting employees, penalties for failure to maintain required records and to provide accurate itemized wage statements, to pay wages on termination and/or resignation and reimbursement of business expenses, interest, attorneys' fees, costs.

5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for himself and all members of the class, to compensate these workers for the unpaid wages and to protect current and future workers of Defendant from being subjected to similar wage theft and otherwise unlawful working conditions.

6. Plaintiff also brings an action seeking relief for Defendant's violations of California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair business practices, as well as injunctive relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.* Plaintiff Roberto Fernando Equila Suar brings this Complaint on his own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Los Angeles and because Defendant owned and operated their business in the County of Los Angeles.

THE PARTIES

PLAINTIFF

9. At all times relevant hereto, Plaintiff was:

- 1 (a) An individual over age 18 and a resident of Los Angeles County,
2 California;
- 3 (b) Employed as a non-exempt hourly employee for Defendant Universal
4 Art Gallery, Inc. in Venice, California;
- 5 (c) Did not receive overtime compensation required by *Labor Code* §§510
6 and 1194 and the applicable Wage Orders;
- 7 (d) Did not receive minimum wages required by *Labor Code* §§ 1194, 1197,
8 1197.1, 1198, and the applicable Wage Orders;
- 9 (e) Did not receive the rest periods required by *Labor Code* §266.7 and the
10 applicable Wage Orders;
- 11 (f) Did not receive accurate itemized wage statements as mandated by
12 *Labor Code* §226;
- 13 (g) Was not paid wages on termination and/or resignation in violation of
14 *Labor Code* §§201-203;
- 15 (h) Did not receive reimbursement for business expenses as mandated by
16 *Labor Code* § 2802; and
- 17 (i) Was not allowed to inspect his employment records in violation of Cal.
18 *Labor Code* §1198.5.

19 **DEFENDANT**

20 10. Plaintiff is informed and believes, and based on that information and belief,
21 alleges, Defendant is, and at all times mentioned herein was:

- 22 (a) A California corporation, with a principal place of business at 2001
23 Lincoln Blvd., Venice, California 90291. Defendant has been authorized
24 to do business and has been doing business in the County of Los
25 Angeles;
- 26 (b) The former employer of Plaintiff and the current and former employer of
27 the putative Class members;
- 28 (c) Paid Plaintiff and all Class Members on an hourly basis;

- 1 (d) Failed to pay Plaintiff and all putative Class members premium overtime
2 wages;
- 3 (e) Failed to pay Plaintiff and all putative Class members minimum wages;
- 4 (f) Failed to provide Plaintiff and all putative Class members with rest
5 periods;
- 6 (g) Failed to accurately maintain records and to provide Plaintiff and all
7 putative Class Members with accurate itemized wage statements;
- 8 (h) Did not properly pay wages on termination and/or resignation;
- 9 (i) Failed to reimburse business expenses; and
- 10 (j) Failed to allow inspection of personnel records. Each of these was a
11 violation of the *Labor Code*.

12 11. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
14 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
15 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
16 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

17 12. Plaintiff is informed and believes, and based on that information and belief
18 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
19 reside in or are authorized to do, or are otherwise doing, business in the State of California.
20 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
21 conduct business in the County of Los Angeles. Each of the Defendants DOES 1 through 100
22 was the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator,
23 alter ego and/or representative of one or more of the other Defendants named herein, and acting
24 with permission, authorization, and/or ratification and consent of the other Defendants.

25 13. Plaintiff is informed and believes, and based on that information and belief
26 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
27 inclusive, are responsible in some manner for one or more of the events and happenings that
28 proximately caused the injuries and damages hereinafter alleged.

14. Plaintiff is informed and believes, and based on that information and belief alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive, are, and at all times mentioned herein were, the agents, servants, and/or employees of each of the other Defendants and that each Defendant was acting within the course and scope of his, hers or its authority as the agent, servant and/or employee of each of the other Defendants. Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the Class, for the damages sustained as a proximate result of their conduct.

15. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendant named in this Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendant's concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendant, represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

16. The Class (“the Class”) is defined as follows:

(a) “All current and former employees of Defendant in California who were paid hourly at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

(b) “All persons who were employees of Defendant in California who were paid hourly and left the employ of Defendant at any time during the period

1 commencing on the date that is within one (1) year prior to the filing of this
2 Complaint and continuing through the present date (the “Class Period”).”

3 17. Plaintiff reserves his right under Rule 3.765 of the California Rules of Court to
4 amend or modify the Class description with greater specificity or further division into
5 subclasses or limitation to particular issues.

6 18. Plaintiff will file notice with the Labor and Workforce Development Agency
7 and obtain authorization under the Private Attorney General Act. He will amend this Complaint
8 after the statutory time period has elapsed.

9 **B. Maintenance of the Action**

10 19. Plaintiff brings this action individually and on behalf of himself and as
11 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
12 and 17204 and *Code of Civil Procedure* § 382.

13 **C. The Class Requisites**

14 20. At all material times, Plaintiff was a member of the Class.

15 21. The Class action meets the statutory prerequisites for maintaining a class action
16 under Code of Civil Procedure § 382 in that:

- 17 (a) The persons who comprise the Class are so numerous that the joinder of all
18 those persons is impracticable and the disposition of their claims as a Class
19 will benefit the parties and the Court;
- 20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
21 that are raised in this Complaint are common to the Class and will apply
22 uniformly to every Class member;
- 23 (c) The claims of the representative Plaintiff are typical of the claims of each
24 Class member. Plaintiff, like all Class members, has sustained damages
25 arising from Defendant’s violations of the laws of the State of California.
26 Plaintiff, and the Class members, were and are similarly or identically
27 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
28 pattern of misconduct engaged in by the Defendant;

1 (d) The representative Plaintiff has, and will continue to, fairly and adequately
2 represent and protect the interests of the Class and has retained counsel
3 who are competent and experienced in class action litigation. There are no
4 material conflicts between the claims of the representative Plaintiff and the
5 Class members that would make class certification inappropriate. Counsel
6 for the Class will vigorously assert the claims of all Class members.

7 22. The persons who comprise the Class are so numerous that joining all of them is
8 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
9 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
10 will fairly and adequately protect the interests of the Class he seeks to represent. Plaintiff does
11 not have any interests that are antagonistic to the Class he seeks to represent. Counsel for
12 Plaintiff are experienced, qualified and generally able to conduct complex class action
13 litigation.

14 23. The Court should permit the action to be maintained as a class action under
15 *Code of Civil Procedure* § 382 because:

- 16 (a) The questions of law and fact common to the Class predominate over any
17 question affecting only individual members;
- 18 (b) A class action is superior to any other available method for fairly and
19 efficiently adjudicating the claims of the Class;
- 20 (c) The Class members are so numerous that it is impractical to bring all of
21 them before the Court;
- 22 (d) Plaintiff and other Class members will not be able to obtain effective and
23 economic legal redress unless the action is maintained as a class action;
- 24 (e) There is a community of interest in obtaining appropriate legal and
25 equitable relief for the statutory violations, and in obtaining adequate
26 compensation for the damages and injuries for which Defendants are
27 responsible in an amount sufficient to adequately compensate the Class
28 members;

1 (f) Without Class certification, the prosecution of separate actions by
2 individual Class members would create a risk of:

3 i. Inconsistent or varying adjudications for individual Class members
4 that would establish incompatible standards of conduct for
5 Defendants; and/or,

6 ii. Adjudication for individual Class members that would, as a
7 practical matter, dispose of other non-party members' interests, or
8 that would substantially impair or impede the non-parties' ability
9 to protect their interests, by, for example, potentially exhausting
10 the funds available from Defendant, and

11 (g) Defendant has acted or refused to act on grounds generally applicable to
12 the Classes, making final injunctive relief appropriate for the Class, as a
13 whole.

14 24. Plaintiff contemplates eventually issuing notice to the proposed Class Members
15 that would set forth the subject and nature of the action. The Defendant's own business records
16 may be utilized for assisting to prepare and issue the contemplated notice. To the extent that
17 any further notices may be required, Plaintiff would contemplate using additional media and/or
18 mailing.

19 GENERAL ALLEGATIONS

20 25. At all times material hereto, Defendant has been, and is, an art fabric company
21 and custom framing store.

22 26. Plaintiff and members of the Class were employed in Fitting and other non-
23 exempt hourly employee positions in California by Defendant at various times during the Class
24 Period.

25 THE CONDUCT

26 27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying
27 Plaintiff and members of the Class wages and compensation owed under California law.

1 28. Starting on or about November 8, 2021 and continuing through April 28, 2023,
2 Defendant employed Plaintiff in Fitting in Venice, California.

3 29. While employed by Defendant, Plaintiff was paid \$17.00 per hour.

4 30. The employment by Defendant of the Class Members, and each them, is
5 governed by Industrial Welfare Commission Wage Order 4, which covers those persons
6 employed in professional, technical, clerical, mechanical and similar occupations.

7 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

8 31. At all times during the relevant time period, Plaintiff and the Class routinely
9 worked schedules such that they were due pay at overtime time rates. During this period, it
10 was the practice and policy of Defendant to not pay employees overtime at appropriate
11 overtime rates. Monies for unpaid overtime remain due and owing.

12 32. Under California law, non-exempt employees as defined by the applicable Wage
13 Order are entitled to minimum wages. Plaintiff and the Class were not paid minimum wages.

14 33. At all times during the relevant time period, Plaintiff and the Class routinely
15 were required to arrive early and begin working. On those occasions, Plaintiff and Class
16 members were asked to write their start time on a piece of paper, in lieu of clocking in.
17 However, the pre-shift time was not reflected on the time punch when Plaintiff's manager input
18 the time. As a result, and because they improperly treated such pre-shift time as non-
19 compensable, Defendant failed to compensate Plaintiff and the Class overtime and minimum
20 wages for such time.

21 34. Under California law, non-exempt employees as defined by Wage Order 4, are
22 entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
23 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.
24 Non-exempt employees are entitled to one hour of pay at their regular pay rate for each day the
25 requisite rest periods are not provided.

26 **REST BREAKS NOT AFFORDED AND/OR INTERRUPTED**

27 35. Plaintiff and the Class were routinely not afforded uninterrupted rest breaks.

36. Plaintiff and Class Members incurred out-of-pocket expenses relating to their work such as cell phone use and purchases of tools, but were not reimbursed therefor. Defendant did not reimburse Plaintiff and members of the Class for these business-related expenses.

37. Defendant failed to allow Plaintiff and Class members to timely inspect their records and payroll files.

FIRST CAUSE OF ACTION

(Labor Code §§510, 558, 1194.3 By Plaintiffs Against Defendant and Does 1-100)

40. During Plaintiff's entire employment with Defendant, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and the applicable IWC Wage Order, Defendant was required to compensate Plaintiff with premium pay for all overtime work, for hours worked excess of eight (8) hours per day and/or forty (40) hours per week.

42. Pursuant to the applicable IWC Wage Order § 3, “Employment beyond eight (8) hours in any workday is permissible provided the employee is compensated for such overtime

1 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
2 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
3 workday...

4 43. California Labor Code section 558 provides in pertinent part:

5
6 (a) Any employer or other person acting on behalf of an employer who
7 violates, or causes to be violated, a section of this chapter or any
8 provision regulating hours and days of work in any order of the
9 Industrial Welfare Commission shall be subject to a civil penalty as
10 follows:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid
12 employee for each pay period for which the employee was underpaid in
13 addition to an amount sufficient to recover underpaid wages.

14 (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was
16 underpaid in addition to an amount sufficient to recover underpaid
17 wages.

18 (3) Wages recovered pursuant to this section shall be paid to the affected
19 employee...

20 (c) The civil penalties provided for in this section are in addition to any
21 other civil or criminal penalty provided by law.

22
23
24 44. Plaintiff and Class Members were at times required to arrive early for their
25 shifts. On those occasions, Plaintiff and Class members were instructed to write their arrival
26 time on a piece of paper, instead of clocking in. However, the pre-shift time was not reflected
27 on the time punch when Plaintiff's manager input the time. Defendant failed to pay Plaintiff
28 and the Class for their early arrival times and as result thereof, Plaintiff and the Class were not

1 paid overtime that was due to them. Further, at times Plaintiff and Class members worked
2 overtime, but were not paid time and one half.

3 45. Plaintiff and members of the Class were not afforded uninterrupted rest breaks.
4 When rest breaks were not afforded, Plaintiff and Class members were not paid premium pay.

5 46. Throughout Plaintiff's employment, Defendant failed and refused to pay and
6 properly calculate overtime compensation to Plaintiff and members of the Class as required by
7 law.

8 47. The foregoing overtime compensation is owed and unpaid. As a direct and
9 proximate result of Defendant's failure and refusal to pay overtime compensation, Plaintiff and
10 Class Members suffered damages in an amount to be proven at trial.

11 48. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
12 counsel in order to enforce Plaintiff's rights to overtime, is entitled to recover Plaintiff's
13 attorneys' fees, costs and interest.

14 **SECOND CAUSE OF ACTION**

15 **FOR FAILURE TO PAY MINIMUM WAGES**

16 **(Labor Code §§ 1194, 1197, 1197.1, 1198, IWC Wage Order 4 By Plaintiffs Against**
17 **Defendant and Does 1-100)**

18 49. Plaintiff and the Class reallege and incorporate by reference all of the allegations
19 set forth in this Complaint.

20 50. Labor Code § 1197 states the California requirement that employees must be
21 paid at least the minimum wage fixed by the Commission, and any payment of less than the
22 minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving
23 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
24 the full amount of this minimum wage." IWC Wage Order 4-2001 also obligates employers to
25 pay each employee minimum wages for all hours worked. These minimum wage standards
26 apply to each hour employees worked for which they were not paid.

27 51. During the four years preceding the filing of this lawsuit, Defendant was
28 required to compensate Plaintiff and members of the Class at the minimum wage, but failed to

1 carry out its duties and responsibilities as an employer imposed under the laws and regulations
2 of the State of California by failing to pay Plaintiff a minimum wage as required by the Cal.
3 Lab. Code and/or IWC Wage Order No. 4. Specifically, Defendant committed the following
4 acts:

- 5 a. failing to pay overtime time;
- 6 b. failing to pay minimum wages;
- 7 c. failing to provide rest breaks as required by law;
- 8 d. failing to maintain records and provide accurate itemized wage
9 statements;
- 10 e. failing to pay wages on resignation or termination;
- 11 f. failing to reimburse business expenses;
- 12 g. failing to provide employment records; and
- 13 h. all other reasons to be discovered.

14 52. As a result of Defendant not paying Plaintiff and Class members for overtime
15 and not being afforded uninterrupted rest breaks, Plaintiff and members of the Class were paid
16 less than minimum wage.

17 53. Labor Code § 1194 provides, in part, that any employee receiving less than the
18 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
19 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

20 54. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
21 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor
22 Code § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
23 for all hours worked under Labor Code § 1194, the employee may recover minimum wages
24 for the time associated with the overtime for which they received no compensation. See *Sillah*
25 *v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
26 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
27 showed they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*,
28 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

1 55. Plaintiff and the other Class Members suffered and continue to suffer losses
2 related to the use and enjoyment of compensation due and owing to them as a direct result of
3 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
4 proof at trial and within the jurisdictional limitations of this Court.

5 56. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
6 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
7 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
8 proof.

9
10 **THIRD CAUSE OF ACTION**
11 **FOR FAILURE TO PROVIDE REST PERIODS**

12 **(Labor Code § 226.7 By Plaintiffs Against Defendant and Does 1 through 100)**

13 57. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this Complaint.

15 58. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
16 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
17 per four hours of work, or major fraction thereof.

18 59. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
19 fails to provide an employee with rest periods in accordance with those provisions, the
20 employer shall pay the employee one hour of pay at the employee's regular rate of
21 compensation for each workday that the rest periods were not so provided.

22 60. Defendant has intentionally and improperly denied uninterrupted rest periods to
23 Plaintiff and the Class in violation of Labor Code § 226.7 and the applicable Wage Order.
24 Further, at times rest breaks were shortened to 8 minutes due to workload.

25 61. At all times relevant hereto, Plaintiff and members of the Class have worked 8
26 or more hours daily.

27 62. At all times relevant hereto, Defendant failed to provide rest periods as required
28 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members rest
breaks were interrupted and/or not afforded. As a result, Defendant failed to provide Plaintiff

1 and Class members compliant rest periods in violation of California Labor Code sections
2 226.7, 512, and 516 and failed to pay the full rest period premiums due.

3 63. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
4 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
5 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
6 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

7 **FOURTH CAUSE OF ACTION**
8 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**
9 **ITEMIZED STATEMENTS**

10 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

11 64. Plaintiff and the Class reallege and incorporate by reference all of the allegations
12 set forth in this Complaint.

13 65. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employer of
14 Plaintiff and the Class.

15 66. Pursuant to California Labor Code sections 226 and 1174, and the applicable
16 Wage Order section 7, Defendant is required to maintain and provide accurate records relating
17 to employee compensation including all formulas and production records used to calculate
18 wages due.

19 67. Defendant is further required to provide semimonthly or at the time of each
20 payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
21 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
22 employee is being paid; (5) the name of the employee; and (6) the name and address of the
23 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

24 68. Section 226(e) provides that an employee is entitled to recover \$50 for the
25 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
26 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
27 periods in which the employer knowingly and intentionally failed to provide accurate itemized
28 statements to the employee causing the employee to suffer injury.

1 69. Notwithstanding these provisions. Defendant has engaged in a uniform practice
2 of refusing to maintain and provide the accurate records and wage statements required by
3 California law.

4 70. Throughout the Class Period, Defendant intentionally and knowingly provided
5 Plaintiff and other members of the Class with weekly itemized wage statements containing
6 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
7 that the payments owed to Plaintiff and the members of the Class for overtime compensation,
8 untimely or missed rest periods, were not included in gross wages earned by Plaintiff and
9 members of the Class. Further, Defendant failed to furnish Plaintiff and the Class, upon
10 payment of wages, itemized statements accurately showing the number of hours worked and
11 the rates paid.

12 71. As a result, Plaintiff and members of the Class have been injured by having been
13 deprived of the true facts pertaining to their compensation and employment.

14 72. Plaintiff and members of the Class were damaged by these failures because,
15 among other things, the failures led them to believe that they were not entitled to overtime
16 compensation and to be paid for rest periods not provided, even though they were so entitled
17 and these failures hindered them from determining the amounts of wages owed to them.

18 73. Plaintiff and members of the Class are entitled to the amounts provided in Labor
19 Code §226(e), plus attorneys' fees and costs.

20 74. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code
21 sections 226(e) and 558, and such other penalties and legal and equitable remedies as are
22 provided by law for Defendant's improper conduct.

23 **FIFTH CAUSE OF ACTION**

24 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

25 **(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)**

26 75. Plaintiff and the Class reallege and incorporate by reference all of the allegations
27 set forth in this Complaint.

76. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

77. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

78. Plaintiff and/or the Class were discharged and/or resigned from Defendant's employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

79. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one day's wages for each day he or she was not timely paid, not to exceed 30 days' wages.

SIXTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

(Cal. Labor Code §2802 By Plaintiffs Against Defendant and Does 1 through 100)

80. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

81. Labor Code §2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

82. At all times relevant herein, Defendant was aware that Plaintiff and members of the Class were incurring out-of-pocket expenses for business purposes, but failed to indemnify Plaintiff and members of the Class for all their business-related expenses, in accordance with Labor Code §2802. Plaintiff and Class members were required to use their personal cell phones for work and send pictures regarding their work to Defendant, but were not reimbursed for such use by Defendant. Further, Plaintiff and Class members were required to purchase tools for their work, but were not reimbursed therefor.

83. Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred for work-related purposes.

1 84. As a result of Defendant's conduct, Plaintiff and Class Members suffered
2 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
3 business-related expenses incurred in the discharge of their duties.

4 85. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
5 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
6 costs of suit.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

9 **(Cal. Labor Code § 1198.5 By Plaintiffs against Defendant and Does 1 through 100)**

10 86. Plaintiff and the Class reallege and incorporate by reference all of the allegations
11 set forth in this Complaint.

12 87. California Labor Code Section 1198.5 provides:

13 (a) Every current and former employee, or his or her representative, has the right
14 to inspect and receive a copy of the personnel records that the employer
15 maintains relating to the employee's performance or to any grievance
16 concerning the employee.

17 (b) The employer shall make the contents of those personnel records available
18 for inspection to the current or former employee, or his or her representative, at
19 reasonable intervals and at reasonable times, but not later than 30 calendar days
20 from the date the employer receives a written request, unless the current or
21 former employee, or his or her representative, and the employer agree in writing
22 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
23 date does not exceed 35 calendar days from the employer's receipt of the written
24 request to inspect the records. Upon a written request from a current or former
25 employee, or his or her representative, the employer shall also provide a copy of
26 the personnel records,..... later than 30 calendar days from the date the employer
27 receives the request...

28 (k) If an employer fails to permit a current or former employee, or his or her
representative, to inspect or copy personnel records within the times specified I
this section... the current or former employee may recover a penalty of seven
hundred fifty dollars (\$750) from the employer.

1 (1) A current or former employee may also bring an action for injunctive relief
2 to obtain compliance with this section, and may recover costs and reasonable
3 attorney's fees in such an action.

4 88. Additionally, pursuant to the applicable Wage Order, at section 7 re: Records,
5 employers are required to keep accurate payroll records on each employee, and such records
6 must be made readily available for inspection by the employee upon reasonable request. The
7 employer must also maintain accurate production records.

8 89. On or about November 21, 2023, through his counsel, Plaintiff issued a written
9 request to Defendant for copies of his personnel records.

10 90. Under California Labor Code Sections 226, 432 and 1198.5, such records were
11 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
12 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
13 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
14 records.

15 91. As a direct result and consequence of Defendant's failure and refusal to permit
16 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
17 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
18 result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
19 penalty of \$750 based upon Defendant's violation of § 1198.5.

20 **EIGHTH CAUSE OF ACTION**

21 **FOR UNFAIR COMPETITION**

22 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1
23 through 100)**

24 92. Plaintiff and the Class reallege and incorporate by reference all of the allegations
25 set forth in this Complaint.

26 93. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
27 Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business &
28 Professions Code §17021.

1 94. The Business & Professions Code defines unfair competition as any unlawful,
2 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
3 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1)
4 pay overtime time compensation; (2) pay minimum wage, (3) pay for rest periods not provided;
5 (4) pay wages due to discharged or quitting employees, (5) furnish Plaintiff and the Class with
6 accurate itemized wage statements, as mandated by the applicable Labor Code and Industrial
7 Welfare Commission requirements, (6) reimburse business expenses and (7) allow inspection
8 of employment records, all in violation of Business & Professions Code §§ 17200 et seq.

9 95. By and through the unfair and unlawful business practices described herein,
10 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
11 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment
12 of Plaintiff and the Class.

13 96. All the acts described herein are violations of, among other things, the Labor
14 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
15 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
16 thereby constitute unfair and unlawful business practices in violation of Business & Professions
17 Code §§ 17200 et seq.

18 97. Plaintiff and the Class are entitled to, and do, seek such relief as may be
19 necessary to restore to them the money and property which Defendant has acquired, or of
20 which Plaintiff and the Class have been deprived by means of the above-described unfair and
21 unlawful business practices.

22 98. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
23 above-described business practices are unfair and unlawful and that injunctive relief should be
24 issued restraining Defendant from engaging in any of the above described unfair and unlawful
25 business practices in the future.

26 99. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
27 redress the injuries which they have suffered as a consequence of the unfair and unlawful
28 business practices of Defendant. As a result of the unfair and unlawful business practices

1 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
2 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
3 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
4 Plaintiff and the Class.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
7 and against Defendant as follows:

8 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
9 and Class Members, according to proof;

10 2. For compensatory damages in the amount of unpaid minimum wages due to
11 Plaintiff and Class Members, according to proof;

12 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
13 Class Members for each workday that a rest period was not provided;

14 4. For payment of unpaid wages in accordance with California labor and
15 employment law;

16 5. For an award of consequential damages in Plaintiff and Class Members' favor
17 and against Defendant, in an amount to be proven at trial;

18 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;

19 7. For payment to Plaintiff and Class Members of waiting time penalties pursuant
20 to *Cal. Lab. Code* §203, in an amount equal to his respective daily rates of pay at the time of
21 termination or layoff, multiplied by the total amount of days elapsed between the date of the
22 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
23 maximum of 30 days' pay, according to proof;

24 8. For specific relief enforcing waiting time penalties of 30 days of per diem wages
25 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

26 9. For compensatory damages in the amount of Plaintiff and Class Members' out
27 of pocket expenses and/or reimbursement of monies incurred while performing Defendant's
28

business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

10. For prejudgment interest accrued on all due and unpaid overtime and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;

11. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 203, 210, 552, 226.7, according to proof;

12. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or *Cal. Code of Civ. Proc.* §1021.5;

13. For an award of restitution of wages to Plaintiff and Class Members in an amount equal to the amount of wages owed and unpaid, according to proof;

14. For injunctive relief ordering the continuing unfair business acts and practices to cease, as the Court deems just and proper;

15. For other injunctive relief ordering Defendant to notify Plaintiff and Class Members that they have not been paid the proper amounts in accordance with California law;

16. For injunctive relief requiring Defendant to comply with Labor Code 1198.5(b)(1);

17. For punitive and exemplary damages in a sum to be determined at trial;

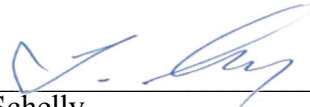
18. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Roberto Fernando Equila Suar hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

Date: November 21, 2023

LIPELES LAW GROUP, APC

By: 

Thomas H. Schelly
Attorneys for Plaintiff
Roberto Fernando Equila Suar