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Superior Court of California
County of Sonoma
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SONOMA**

ROGELIO REYES LUNA, an
individual, on his own behalf and on
behalf of all others similarly situated,

Plaintiffs,

vs.

ULTIMA MOBILE BOTTLING
COMPANY, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 23CV01503

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 TO ROUNDING (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119);**
- 3. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226);**
- 4. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. Labor Code §2802);**
- 5. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. Labor Code §1198.5); and**
- 6. 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 ROGELIO REYES LUNA ("Plaintiff") alleges the following:

6 1. This is a class action brought under California law by an individual who was
7 employed by Ultima Mobile Bottling Company (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, failure to
10 pay minimum wages due to rounding, failure to maintain records and to provide accurate
11 itemized wage statements, failure to reimburse business expenses and failure to allow
12 inspection of employment records.

13 2. Plaintiff has worked as an employee for Defendant's bottling company in
14 Sonoma, California since on or about July 1, 2023. While working, Plaintiff and members of
15 the Class have been forced to endure stressful and illegal workplace conditions created by
16 Defendant's efforts to maximize profits and tightly control labor costs.

17 3. Plaintiff, like his co-workers whom Defendant also employed during the
18 applicable limitations period, spend their workdays as Line Laborers and non-exempt hourly
19 employees, under illegal and highly regimented circumstances. That regimen results from
20 Defendant's insistence to strictly monitor and curtail labor costs, which Defendant
21 accomplishes by not paying for all labor costs, failing to pay overtime, failing to pay minimum
22 wages due to rounding, failing to maintain records and to provide accurate itemized wage
23 statements, failing to reimburse business expenses, failing to allow inspection of employment
24 records and by using other unlawful stratagems to ensure that labor costs remain artificially
25 low.

26 4. Plaintiff brings this class action to recover, among other things, wages and
27 penalties from unpaid wages earned and due, including but not limited to, premium overtime
28 wages, minimum wages, penalties for failure to maintain required records and to provide

1 accurate itemized wage statements, reimbursement of business expenses, interest, attorneys'
2 fees, costs.

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

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

11 JURISDICTION AND VENUE

12 7. This Court has jurisdiction over this Complaint under Code of Civil Procedure
13 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
14 *Professions Code* §§ 17200 *et seq.* Plaintiff Rogelio Reyes Luna brings this Complaint on his
15 own behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

16 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
17 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
18 herein, occurred in the County of Sonoma and because Defendant owned and operated their
19 business in the County of Sonoma.

20 THE PARTIES

21 PLAINTIFF

22 9. At all times relevant hereto, Plaintiff was:

- 23 (a) An individual over age 18 and a resident of Sonoma County, California;
- 24 (b) Employed as a non-exempt hourly employee for Defendant Ultima
25 Mobile Bottling Company ("UMBC" or "Defendant") in Sonoma,
26 California;
- 27 (c) Did not receive overtime compensation required by *Labor Code* §§510
28 and 1194 and the applicable Wage Orders;

- 1 (d) Did not receive minimum wage compensation due to rounding as
2 required by *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and the
3 applicable Wage Orders;
4 (e) Did not receive accurate itemized wage statements as mandated by
5 *Labor Code* §226;
6 (f) Did not receive reimbursement for business expenses as mandated by
7 *Labor Code* § 2802; and
8 (g) Was not allowed to inspect his employment records in violation of Cal.
9 *Labor Code* §1198.5.

10 **DEFENDANT**

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

- 13 (a) A California corporation, with a principal place of business at 23355
14 Millerick Road, Sonoma, California 95476. UMBC has been authorized
15 to do business and has been doing business in the County of Sonoma;
16 (b) The current employer of Plaintiff and the current and former employer of
17 the putative Class members;
18 (c) Paid Plaintiff and all Class Members on an hourly basis;
19 (d) Failed to pay Plaintiff and all putative Class members premium overtime
20 wages;
21 (e) Failed to Plaintiff and all putative Class members minimum wages due
22 to rounding;
23 (f) Failed to accurately maintain records;
24 (g) Failed to reimburse business expenses; and
25 (h) Failed to allow inspection of personnel records. Each of these was a
26 violation of the *Labor Code*.

27 11. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown

1 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
2 *Civil Procedure* § 474. Plaintiff will seek leave to amend his Complaint to allege the true
3 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

4 12. Plaintiff is informed and believes, and based on that information and belief
5 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
6 reside in or are authorized to do, or are otherwise doing, business in the State of California.
7 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
8 conduct business in the County of Sonoma. Each of the Defendants DOES 1 through 100 was
9 the managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter
10 ego and/or representative of one or more of the other Defendants named herein, and acting with
11 permission, authorization, and/or ratification and consent of the other Defendants.

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

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

23 15. Plaintiff is informed and believes, and based on that information and belief
24 alleges, that the Defendant named in this Complaint, including DOES 1 through 100, inclusive,
25 knowingly and willfully acted in concert, conspired and agreed together among themselves and
26 entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff,
27 and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of
28 Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, the acts being

1 negligently and/or intentionally inflicted. Their conspiracy, and Defendant's concerted actions,
2 were such that, to Plaintiff's information and belief, and to all appearances, Defendant,
3 represented a unified body so that the actions of one Defendant were accomplished in concert
4 with, and with the knowledge, ratification, authorization and approval of each of the other
5 Defendants.

6 **CLASS ALLEGATIONS**

7 **A. The Definition of the Class**

8 16. The Class ("the Class") is defined as follows:

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

13 (b) "All persons who were employees of Defendant in California who were paid
14 hourly and left the employ of Defendant at any time during the period
15 commencing on the date that is within one (1) year prior to the filing of this
16 Complaint and continuing through the present date (the "Class Period")."

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

20 18. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
21 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
22 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
23 amend this Complaint once he completes and complies with the provisions under the law.

24 **B. Maintenance of the Action**

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

28 **C. The Class Requisites**

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

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

- (a) The persons who comprise the Class are so numerous that the joinder of all those persons is impracticable and the disposition of their claims as a Class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and will apply uniformly to every Class member;
- (c) The claims of the representative Plaintiff are typical of the claims of each Class member. Plaintiff, like all Class members, has sustained damages arising from Defendant’s violations of the laws of the State of California. Plaintiff, and the Class members, were and are similarly or identically harmed by the same unlawful, deceptive, unfair, systematic and pervasive pattern of misconduct engaged in by the Defendant;
- (d) The representative Plaintiff has, and will continue to, fairly and adequately represent and protect the interests of the Class and has retained counsel who are competent and experienced in class action litigation. There are no material conflicts between the claims of the representative Plaintiff and the Class members that would make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all Class members.

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

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

- 3 (a) The questions of law and fact common to the Class predominate over any
4 question affecting only individual members;
- 5 (b) A class action is superior to any other available method for fairly and
6 efficiently adjudicating the claims of the Class;
- 7 (c) The Class members are so numerous that it is impractical to bring all of
8 them before the Court;
- 9 (d) Plaintiff and other Class members will not be able to obtain effective and
10 economic legal redress unless the action is maintained as a class action;
- 11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the statutory violations, and in obtaining adequate
13 compensation for the damages and injuries for which Defendants are
14 responsible in an amount sufficient to adequately compensate the Class
15 members;
- 16 (f) Without Class certification, the prosecution of separate actions by
17 individual Class members would create a risk of:
- 18 i. Inconsistent or varying adjudications for individual Class members
19 that would establish incompatible standards of conduct for
20 Defendants; and/or,
- 21 ii. Adjudication for individual Class members that would, as a
22 practical matter, dispose of other non-party members' interests, or
23 that would substantially impair or impede the non-parties' ability
24 to protect their interests, by, for example, potentially exhausting
25 the funds available from Defendant, and
- 26 (g) Defendant has acted or refused to act on grounds generally applicable to
27 the Classes, making final injunctive relief appropriate for the Class, as a
28 whole.

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

6 **GENERAL ALLEGATIONS**

7 25. At all times material hereto, UMBC has been, and is, a mobile bottling
8 company.

9 26. Plaintiff and members of the Class were employed as Line Laborers and other
10 non-exempt hourly employees in California by Defendant at various times during the Class
11 Period.

12 **THE CONDUCT**

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

15 28. Starting on or about July 1, 2023 and continuing through the present, Defendant
16 employed Plaintiff as a Line Laborer in Sonoma, California. Plaintiff is responsible for rotating
17 and placing stickers on bottles, filling bottles and filling pallets.

18 29. While employed by Defendant, Plaintiff was paid \$18.00 per hour.

19 30. The employment by Defendant of the Class Members, and each them, is
20 governed by Industrial Welfare Commission Wage Order 1, which covers those persons
21 employed in the Manufacturing industry.

22 **FAILURE TO PAY OVERTIME/MINIMUM WAGES DUE TO ROUNDING**

23 31. At all times during the relevant time period, Plaintiff and the Class routinely
24 worked schedules such that they were due pay at overtime time rates. Plaintiff and members of
25 the Class's hours were rounded down. During this period, it was the practice and policy of
26 Defendant to not pay employees at appropriate overtime rates. Monies for unpaid overtime
27 remain due and owing.
28

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

3 33. Defendant unlawfully rounded down or “shaved” the hours worked by
4 employees such that they were not paid for all hours worked. Plaintiff and Class members did
5 not use electronic time clocks at work to keep track of their time. Plaintiff’s supervisor
6 handwrote his shift’s scheduled start and stop times. Plaintiff’s paystubs show rounded hours
7 and the hand-written timesheets will show rounded entries.

8 **LACK OF EXPENSE REIMBURSEMENT**

9 34. Plaintiff and Class Members incurred out-of-pocket expenses relating to their
10 work such as their personal vehicle use, but were not reimbursed therefor. Plaintiff and
11 members of the Class used their vehicles to drive to various locations to perform their job.
12 Defendant did not reimburse Plaintiff and members of the Class for these business-related
13 expenses.

14 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

15 35. Defendant failed to allow Plaintiff and Class members to timely inspect their
16 records and payroll files.

17 36. As a result of Defendant’s failure to pay employees at required overtime time
18 rates and minimum wages, the wage statements issued to the employees did not comply with
19 *Labor Code* §226 and California Industrial Welfare Commission (“IWC”) Wage Order 1 in that
20 they did not accurately reflect all wages earned and due and owing.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME TIME**

23 **(Labor Code §§510, 558, 1194.3 and Wage Order 1 By Plaintiffs Against Defendant and**
24 **Does 1-100)**

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

27 38. During Plaintiff’s entire employment with Defendant, pursuant to Cal. Lab.
28 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 1, Defendant was required to

1 compensate Plaintiff with premium pay for all overtime work, for hours worked in excess of
2 eight (8) hours per day and/or forty (40) hours per week.

3 39. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
4 who had not been paid overtime compensation could recover the unpaid balance of the full
5 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
6 fees and costs of suit.

7 40. Pursuant to IWC Wage Order No. 1-2001, § 3, "Employment beyond eight (8)
8 hours in any workday is permissible provided the employee is compensated for such overtime
9 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
10 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
11 workday...

12 41. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

26 42. Plaintiff and members of the Class's hours were rounded. As a result, Plaintiff
27 and the Class were not paid overtime that was due to them.
28

43. Plaintiff and Class Members were at times required to work in excess of 8 hours, but were not accurately paid for overtime since their hours were rounded.

44. Plaintiff and members of the Class were systematically deprived of earned wages.

45. Throughout Plaintiff's employment, Defendant failed and refused to pay overtime compensation to Plaintiff and members of the Class as required by law.

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

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

SECOND CAUSE OF ACTION

FOR FAILURE TO PAY MINIMUM WAGES DUE TO ROUNDING

(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 1 By Plaintiffs Against Defendant)

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

49. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order 1-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid.

50. During the four years preceding the filing of this lawsuit, Defendant was required to compensate Plaintiff at the minimum wage, but failed to carry out its duties and responsibilities as an employer imposed under the laws and regulations of the State of

1 California by failing to pay Plaintiff a minimum wage as required by the Cal. Lab. Code
2 and/or IWC Wage Order No. 1. Specifically, Defendant committed the following acts:

- 3 a. failing to pay overtime time;
- 4 b. failing to pay minimum wages;
- 5 c. failing to maintain records and provide accurate itemized wage
6 statements;
- 7 d. failing to reimburse business expenses;
- 8 e. failing to provide employment records; and
- 9 f. all other reasons to be discovered.

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

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

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

26 54. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
27 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
28

1 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
2 proof.

3 **THIRD CAUSE OF ACTION**

4 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

5 **ITEMIZED STATEMENTS**

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

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

9 56. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employers
10 of Plaintiff and the Class.

11 57. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 1-
12 2001 section 7, Defendant is required to maintain and provide accurate records relating to
13 employee compensation including all formulas and production records used to calculate wages
14 due.

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

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

25 60. Notwithstanding these provisions. Defendant has engaged in a uniform practice
26 of refusing to maintain and provide the accurate records and wage statements required by
27 California law.

61. Throughout the Class Period, Defendant intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime compensation and minimum wages, were not included in gross wages earned by Plaintiff and members of the Class. Further, Defendant failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately showing the number of hours worked and the rates paid.

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

63. Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation and minimum wages, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

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

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

FOURTH CAUSE OF ACTION

REIMBURSEMENT OF BUSINESS EXPENSES

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

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

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

68. 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

1 Labor Code §2802. Plaintiff and members of the Class were required to drive their personal
2 vehicles on behalf of Defendant during work hours to travel various locations where the
3 bottling trailers were located.

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

6 70. As a result of Defendant's conduct, Plaintiff and Class Members suffered
7 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
8 business-related expenses, including wear and tear expenses, incurred in the discharge of their
9 duties.

10 71. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
11 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
12 costs of suit.

13 **FIFTH CAUSE OF ACTION**

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

15 **(Cal. Labor Code § 1198.5; IWC Wage Order No. 1 By Plaintiffs against Defendant and**
16 **Does 1 through 100)**

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

19 73. California Labor Code Section 1198.5 provides:

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

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

1 the personnel records,..... later than 30 calendar days from the date the employer
2 receives the request...

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

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

10 74. Additionally, pursuant to Wage Order 1, at section 7 re: Records, employers are
11 required to keep accurate payroll records on each employee, and such records must be made
12 readily available for inspection by the employee upon reasonable request. The employer must
13 also maintain accurate production records.

14 75. On or about November 9, 2023, through his counsel, Plaintiff issued a written
15 request to Defendant for copies of his personnel records.

16 76. Under California Labor Code Sections 226, 432 and 1198.5, such records were
17 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
18 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
19 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
20 records.

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

26 **SIXTH CAUSE OF ACTION**

27 **FOR UNFAIR COMPETITION**

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

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

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

6 80. The Business & Professions Code defines unfair competition as any unlawful,
7 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
8 described herein, Defendants have engaged in unfair and unlawful practices by failing to (1)
9 pay overtime time compensation; (2) pay minimum wages; (3) furnish Plaintiff and the Class
10 with accurate itemized wage statements, as mandated by the applicable Labor Code and
11 Industrial Welfare Commission requirements, (4) reimburse business expenses, and (5) allow
12 inspection of employment records, all in violation of Business & Professions Code §§ 17200 et
13 seq.

14 81. By and through the unfair and unlawful business practices described herein,
15 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
16 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment
17 of Plaintiff and the Class.

18 82. All the acts described herein are violations of, among other things, the Labor
19 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
20 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
21 thereby constitute unfair and unlawful business practices in violation of Business & Professions
22 Code §§ 17200 et seq.

23 83. Plaintiff and the Class are entitled to, and do, seek such relief as may be
24 necessary to restore to them the money and property which Defendant has acquired, or of
25 which Plaintiff and the Class have been deprived by means of the above-described unfair and
26 unlawful business practices.

27 84. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
28 above-described business practices are unfair and unlawful and that injunctive relief should be

1 issued restraining Defendant from engaging in any of the above described unfair and unlawful
2 business practices in the future.

3 85. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
4 redress the injuries which they have suffered as a consequence of the unfair and unlawful
5 business practices of Defendant. As a result of the unfair and unlawful business practices
6 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
7 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
8 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
9 Plaintiff and the Class.

10 **PRAYER FOR RELIEF**

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

- 13 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
14 and Class Members, according to proof;
- 15 2. For compensatory damages in the amount of unpaid minimum wages due to
16 Plaintiff and Class Members, according to proof;
- 17 3. For payment of unpaid wages in accordance with California labor and
18 employment law;
- 19 4. For an award of consequential damages in Plaintiff and Class Members' favor
20 and against Defendant, in an amount to be proven at trial;
- 21 5. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 22 6. For compensatory damages in the amount of Plaintiff and Class Members' out
23 of pocket expenses and/or reimbursement of monies incurred while performing Defendant's
24 business-related duties plus interests, costs and attorneys' fees pursuant to *Cal. Code Civ. Proc.*
25 §2802(c);
- 26 7. For prejudgment interest accrued on all due and unpaid overtime and minimum
27 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
28 1194(a), according to proof;

1 8. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, according to
2 proof;

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

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

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

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

12 13. For injunctive relief requiring Defendant to comply with Labor Code
13 1198.5(b)(1);

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

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

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff Rogelio Reyes Luna hereby respectfully requests a trial by jury for all claims
18 and issues raised in his Complaint that may be entitled to a jury trial.

19
20 LIPELES LAW GROUP, APC

21 Date: November 9, 2023

22
23 By: 
24 Thomas H. Schelly
25 Attorneys for Plaintiff
26 Rogelio Reyes Luna
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