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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN MATEO**

23-CIV-05397

10 LAURENCIO CRUZ, an individual, on behalf of
11 himself,

12 Plaintiff,

13 vs.

14 CALIFORNIA DETAIL, INC., a California
corporation; and DOES 1-20, inclusive,

15 Defendants.

Case No.:

COMPLAINT FOR:

1. Failure to Pay for All Hours Worked, Wage Orders and Labor Code §§ 200, *et seq.*;
2. Failure to Pay Minimum Wage; Wage Orders and Labor Code §§ 1194, 1194.2 and 1197;
3. Failure to Pay Overtime, Wage Orders and Labor Code § 510;
4. Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof, Wage Orders and Labor Code §§ 512, 226.7;
5. Failure to Provide Rest and Recovery Periods, or Premium Wages in Lieu Thereof, Wage Orders and Labor Code § 226.7
6. Conversion of Gratuities to Satisfy Wage Obligations, Wage Orders and Labor Code § 350, *et seq.*
7. Failure to Issue Accurate Wage Statements, Wage Orders and Labor Code §§ 226, 226.2, 246, *et seq.*;
8. Unfair Competition Law, Business & Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Laurencio Cruz (“Plaintiff”) brings this action against California Detail, Inc., and Does 1 through 20 (collectively “Defendants”) on behalf of himself during the period four (4) years prior to the filing of the initial complaint in this action through the date of this action’s final disposition (the “Liability Period”). Plaintiff brings this action to recover unpaid wages, interest, statutory penalties and civil penalties based on Defendants’ violations of California law.

2. During the Liability Period, Defendants systematically violated the employment rights of Plaintiff and Aggrieved Employees by engaging in widespread wage theft. At all times relevant to this action, Defendants established, maintained and enforced unlawful compensation and payroll practices and policies including, but not limited to, the following: failing to compensate Plaintiff and Aggrieved Employees for all hours worked at the applicable minimum and overtime wage rates; failing to provide Plaintiff and Aggrieved Employees with timely meal periods within five hours of their respective start times, or otherwise pay premium wages in lieu thereof; failing to authorize and permit separately paid rest and recovery periods to Plaintiff and Aggrieved Employees, or otherwise pay premium wages in lieu thereof, and failing to provide potable water and shade following exposure to temperatures exceeding 80 degrees outdoors; unlawfully converting gratuities and tips and using them to satisfy wage obligations; and failing to timely furnish accurate itemized statements each pay period stating, among other things, Defendants’ correct physical address, total hours worked, gross and net wages earned at all applicable hourly and piece rates, all separately compensated rest and recovery periods and nonproductive time, and all premium wages earned, or otherwise failing to furnish any itemized statements in certain pay periods where Plaintiff and Aggrieved Employees are paid using two checks.

3. Defendants’ acts and omissions, which violate the Labor Code, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiff and Aggrieved Employees he seeks to represent are therefore entitled to all remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other equitable relief for a period of four

1 years from the filing of the original complaint through the date of this action's final disposition.
2 Plaintiff also seeks reasonable attorneys' fees and costs pursuant to, *inter alia*, Labor Code
3 sections 218.5, 2699, 226(e) & (h), 1194(a), 1198.5(l), 2802, 2810(g) and Code of Civil Procedure
4 section 1021.5.

5 4. Pursuant to Labor Code section 2699.3, Plaintiff has given written notice to the
6 employer and the Labor and Workforce Development Agency (LWDA) of the alleged Labor Code and
7 Wage Order violations, and the facts and theories supporting those violations. Upon the expiration of
8 the 65-day waiting period, if the Agency has yet to provide notice of its intent to investigate this
9 matter, Plaintiff will have fulfilled the administrative prerequisites of Labor Code § 2699.3, and will be
10 statutorily authorized to act on behalf of the State of California to enforce the state's labor and
11 employment laws and collect civil penalties on behalf of the state and current or former employees,
12 including themselves. Plaintiff will seek to hold Defendants and other persons who violated or caused
13 violations of the Labor Code and Wage Orders liable for civil penalties owed to the State of California
14 and current and former workers ("Aggrieved Employees").

15 5. At all times relevant to this action, Defendants' conduct has been willful and in reckless
16 disregard of the rights of their workers. Defendants have been on notice of the alleged illegalities but
17 have deliberately continued to exploit workers by enforcing and maintaining the illegal practices
18 described herein. This action is brought not only to recover rightfully earned wages but also to enforce
19 the state's laws, restore ill-gotten gains and deter Defendants from their illegal conduct. Plaintiff
20 therefore seeks all remedies available to themselves and to Aggrieved Employees.

21 **II. THE PARTIES**

22 6. Plaintiff Laurencio Cruz is an individual who resides in California. Defendants
23 employed Plaintiff in San Mateo County from approximately 2018 through the present at their car
24 detailing and wash operation located at 633 Bair Island Road, Redwood City, California 94063.
25 Defendants paid Plaintiff at various piece rates during his employment, depending on the age, size, and
26 level of dirtiness of the vehicle to be detailed and washed. For example, if the automobile is newer or
27 comes from a dealership (with whom Defendants have several accounts), Defendants pay a lesser rate
28 like \$30 or \$35 per car; a used car gets paid at a higher rate of \$40 to \$45 per car; if it is a particularly

1 large or dirty automobile, it gets paid at the highest rates between \$50 and \$60 per car. Defendants
2 have never paid Plaintiff an hourly wage at any minimum, contractual, or regular rate of pay for
3 separately paid rest breaks, nonproductive time, meal period or rest and recovery period premiums, or
4 overtime. Plaintiff is an aggrieved employee within the meaning of Labor Code section 2699 who has
5 suffered injury in fact and lost money or property as a result of the conduct described in this complaint.
6 He has given notice of the alleged violations, along with the facts and theories supporting them
7 pursuant to Labor Code section 2699.3, and will assert a representative claim pursuant to PAGA on
8 behalf of the state and other aggrieved employees upon the expiration of the 65-day notice period.

9 7. Defendant California Detail, Inc. ("CDI") is a California corporation registered on
10 October 15, 2003. The registered California address for CDI is 113 Beech Street, Redwood City,
11 California 94063, with the same agent for service of process address, and the address listed on wage
12 statements is 855 Jefferson Avenue #492, Redwood City, California 94064, which is in fact a
13 Redwood City United States Postal Service Post Office Box. However, the Beech Street address is an
14 old address where CDI was previously located. It is currently located at 633 Bair Island Road,
15 Redwood City, California 94063. At all times relevant to this action, CDI owned and/or operated
16 and/or controlled the car detailing and wash operation at which Plaintiff worked for Defendants. On
17 information and belief, at all times relevant to this action, CDI owned, controlled, and/or operated a
18 business or establishment that employed persons within the meaning of the Wage Orders, operated as
19 an employer or joint employer of Plaintiff and Aggrieved Employees in this case and committed the
20 acts complained of here in California and in this County. Plaintiff alleges that CDI is liable for causing
21 the violations alleged herein pursuant to Labor Code sections 558 and 1197.1.

22 8. Plaintiff is informed and believes and therefore alleges that at all times mentioned
23 herein, each of the Defendants was the agent of every other Defendant. All acts alleged to have been
24 committed by any Defendant were committed on behalf of every other Defendant. At all times
25 relevant to this action, each alleged act was committed by Defendants, and/or agents, servants, or
26 employees of Defendants, and Defendants directed, authorized or ratified each such act. On
27 information and belief, and at all times relevant to this action, each of the Defendants aided and abetted
28 every other Defendant in the commission of acts alleged herein. Plaintiff is informed and believes and

1 therefore alleges that each Defendant and each of the fictitiously named Defendants are responsible in
2 some manner for the occurrences alleged herein and that the damages alleged herein were directly and
3 proximately caused by their conduct

4 9. The true names and capacities, whether individual, corporate, associates, or otherwise,
5 of Defendants sued as DOES One through Twenty, inclusive, are currently unknown to Plaintiff, who
6 therefore sues such Defendants by fictitious names as permitted under law, including Code of Civil
7 Procedure section 474. Plaintiff is informed and believes that each DOE Defendant is legally
8 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court
9 to amend this Complaint to reflect the true names and capacities of the Defendants designated as
10 DOES when such identities become known.

11 **III. JURISDICTION & VENUE**

12 10. This Court has jurisdiction over plaintiff's claims under the California Labor Code and
13 the Unfair Competition Law, California Business & Professions Code sections 17200, *et seq.*

14 11. Venue is proper in the Superior Court for San Mateo County pursuant to California
15 Code of Civil Procedure section 395(a), because some Defendants, including Defendant CDI, reside in
16 San Mateo County, and because Plaintiff has been harmed by Defendants' violations of the Labor
17 Code in San Mateo County. At all relevant times, Defendants have conducted business in San Mateo
18 County and engaged employees to work within the County.

19 **IV. FACTUAL ALLEGATIONS**

20 12. At all times relevant to this action, Defendants maintained unlawful employment, labor
21 and compensation policies and practices that affected Plaintiff and, on information and belief, other
22 Aggrieved Employees.

23 13. Defendants employed Plaintiff as a detailer, performing car washing and detailing work
24 for Defendants throughout the year during the Liability Period, from 2018 to the present.

25 14. Defendants failed to pay Plaintiff and, on information and belief, Aggrieved Employees
26 for all hours worked in violation of the state's legal minimum and overtime wage provisions contained
27 in the Labor Code, Wage Orders and local ordinances.

1 15. Defendants recruited and hired Plaintiff and, on information and belief, Aggrieved
2 Employees. At all times relevant to this action, Defendants directed Plaintiff and, on information and
3 belief, Aggrieved Employees when to begin and end work, directed them on what days and at what
4 times to report to the worksite, assigned tasks to each employee at the worksite, directed each
5 employee as to when and if they could take rest breaks and meal periods, and established their rate(s)
6 of pay. At all times relevant to this action, all work performed by Plaintiff and, on information and
7 belief, Aggrieved Employees was suffered and permitted by Defendants and performed under the
8 direction and control of Defendants.

9 16. Defendants, directly or through their agents and/or employees, advised Plaintiff and, on
10 information and belief, Aggrieved Employees that they would be paid at varying piece rates for their
11 automobile detailing work. Defendants, directly or through their agents or employees, advised
12 Plaintiff and, on information and belief, Aggrieved Employees the rates at which piece rate work
13 would be compensated, but did not do so in writing. Defendants, directly or through their agents or
14 employees, advised Plaintiff and, on information and belief, Aggrieved Employees that they would be
15 paid on a semi-monthly basis.

16 17. At all times relevant to this action, Plaintiff and, on information and belief, Aggrieved
17 Employees were scheduled to work for Defendants five (5) days per week. On information and belief,
18 at all times relevant to this action, shifts were scheduled to exceed six (6) hours per day, including an
19 unpaid thirty (30) minute meal period, regardless of whether Plaintiff and Aggrieved Employees were,
20 in fact, provided a full net-thirty (30) minute, uninterrupted meal period.

21 18. At all times relevant to this action, Plaintiff and, on information and belief, Aggrieved
22 Employees were suffered, permitted and required to perform nonproductive work during shifts due to
23 Defendants' policies and practices. For example at all times relevant to this action, Plaintiff and, on
24 information and belief, Aggrieved Employees were suffered, permitted and required to clean their
25 work stations before, between, and after car washes, organize tools and equipment throughout the day,
26 and wait periods of time until they were assigned their next automobile to detail.

27 19. This time spent performing nonproductive tasks on workdays in which Plaintiff and
28 Aggrieved Employees performed piece rate production work before the scheduled start of their shifts,

1 between car details, during their unpaid thirty (30) minute meal periods, and after the scheduled end of
2 their shifts, constitute hours worked that should have been paid at their regular rate(s) of pay, but have
3 instead gone and continue to go unpaid by Defendants.

4 20. On information and belief, at all times relevant to this action Defendants violated, and
5 continues to violate, the Labor Code and Wage Orders by failing to provide Plaintiff and Aggrieved
6 Employees with lawful meal periods. On information and belief, Defendants maintained a policy
7 and/or practice that required Plaintiff and Aggrieved Employees to work in excess of five (5) hours in
8 a day without being provided one (1) net thirty (30) minute meal period, and in excess of ten (10)
9 hours in a day without being provided two (2) net thirty (30) minute meal periods. Plaintiff and, on
10 information and belief, Aggrieved Employees were suffered and permitted to work during their thirty
11 (30) minute unpaid meal periods. Plaintiff and Aggrieved Employees were unable to take a full thirty
12 (30) minute uninterrupted and off duty meal period, as workers performed work activities during the
13 thirty (30) minute unpaid meal period and were required to be at their stations and ready to commence
14 work even if they had not been afforded thirty (30) minutes off duty. Plaintiff and, on information and
15 belief, Aggrieved Employees were also denied meal period premiums for denied, short or untimely
16 meal periods.

17 21. On information and belief, at all times relevant to this action Defendants violated, and
18 continues to violate, the Labor Code and Wage Orders by failing to authorize and permit separately
19 compensate rest and recovery periods of at least net 10 minutes of rest time at the required rate of two
20 breaks for shifts between four and up to 10 hours, three breaks for shifts greater than 10 hours and so
21 on. Plaintiff and, on information and belief, Aggrieved Employees regularly worked more than six
22 hours in a day without being authorized or permitted to take a 10-minute duty-free rest periods for each
23 four hours, or a major fraction thereof, worked. Plaintiff and, on information and belief, Aggrieved
24 Employees were denied rest premiums for denied, short or untimely rest breaks, and were denied
25 separate compensation for such rest and recovery periods at their regular rate(s) of pay. Finally,
26 Defendant fails to provide Plaintiff and, on information and belief, Aggrieved Employees with shade
27 and potable water following exposure to temperatures exceeding 80 degrees in an outdoor workplace
28 during recovery periods in order to prevent heat illness.

1 22. On information and belief, at all times relevant to this action Defendants knew or
2 should have known that Plaintiff and Aggrieved Employees were entitled to receive all wages owed to
3 them during their employment. Nevertheless, on information and belief, Plaintiff and Aggrieved
4 Employees did not receive payment of all wages, including separate compensation for rest and
5 recovery periods, nonproductive time and meal period and rest break premiums at the correct regular
6 rate(s) of pay, within any time permissible pursuant to Labor Code section 204.

7 23. At all times relevant to this action, Defendants unlawfully converted tips and gratuities
8 that were paid by customers and were the property of Plaintiff and Aggrieved Employees. When
9 Defendants' private customers add a tip or gratuity to their detailing payment, either with physical cash
10 or by adding a tip as a line item on credit card charges, they are led to believe by Defendants and/or
11 their agents and employees, that such gratuities will be paid to the detailers who cleaned their cars.
12 However, Defendants unlawfully retaining these gratuities and using them to satisfy wage obligations,
13 instead of paying such gratuities—the property of Plaintiff and Aggrieved Employees— to the
14 detailers to whom they belong.

15 24. At all times relevant to this action, Defendants knowingly and willfully failed to furnish
16 itemized wage statements within the meaning of the Wage Orders and Labor Code section 226 that
17 accurately show, *inter alia*, the correct legal address of the employer (stating a Post Office Box address
18 at the Redwood City United States Postal Service on Jefferson Avenue instead of its physical location
19 at 633 Bair Island Road), gross and net wages earned, total hours worked, piece rate units earned,
20 applicable rates of pay, and all deductions made.

21 25. On information and belief, the wage statements provided by Defendants to Plaintiff and
22 Aggrieved Employees fail to meet this standard because they inaccurately show the total number of
23 hours, and gross and net wages earned due to Defendants' failure to pay for all paid rest and recovery
24 periods and nonproductive time, or for premium wages in lieu of meal periods and rest and recovery
25 periods, at the contractual, statutory, or regular rate(s) of pay. Defendants' wage statements
26 inaccurately list all the hourly rates in effect during the pay period and corresponding number of hours
27 due to the failure to separately pay for all nonproductive time, rest and recovery periods, and premium
28 wages. Defendants' wage statements also failed to include all gratuities paid and owing to Plaintiff

1 and Aggrieved Employees. As a result of these failures, at all times relevant to this action, Defendants
2 failed to maintain accurate payroll records within the meaning of the Wage Orders and Labor Code
3 section 1174.

4 26. At times relevant to this action, itemized wage statements issued to Plaintiff and
5 Aggrieved Employees by Defendants failed to accurately set forth the amount of accrued paid sick
6 leave available for use by Plaintiff and Aggrieved Employees, failed to accurately set forth periodic
7 accrual of paid sick days at the rate of at least one hour per every thirty (30) hours worked.

8 27. On information and belief, Defendants knew or should have known that they had a duty
9 to compensate Plaintiff and Aggrieved Employees pursuant to California law, and that Defendants had
10 the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do
11 so, and falsely represented to Plaintiff and Aggrieved Employees that they were properly paid all
12 wages, in order to increase Defendants' profits and obtain an unfair advantage over Defendants'
13 competition.

14 **V. CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 Failure to Pay for All Hours Worked

17 (Violation of Wage Orders and Labor Code sections 200, 204, 204b)

18 Plaintiff on Behalf of Himself Against all Defendants

19 28. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

20 29. At all relevant times, Defendants have been subject to Labor Code and Wage Order
21 provisions requiring compensation for all "hours worked." Defendants violated the Wage Orders and
22 Labor Code sections 200, *et seq.* by failing to compensate Plaintiff and, on information and belief,
23 Aggrieved Employees for all hours worked.

24 30. The Wage Orders define hours worked as all "time during which an employee is subject
25 to the control of an employer and includes all the time the employee is suffered or permitted to work,
26 whether or not required to do so." Further, the Wage Orders and California law require compensation
27 for small fractions of time or *de minimis* time.

28 31. Defendants' conduct violates provisions of Local Ordinances, the Wage Orders and
Labor Code. Defendants have secretly paid Plaintiff and, on information and belief, Aggrieved

1 Employees less than the rates designated by statute or contract while purporting to pay the designated
2 rates and have violated Labor Code sections 204 and 204b by failing to pay all wages owed weekly or
3 semi-monthly.

4 32. Wherefore, Plaintiff seeks unpaid wages, interest, costs and attorneys' fees in amounts
5 to be proven at trial on behalf of himself.

6 **SECOND CAUSE OF ACTION**

7 Failure to Pay Legal Minimum Wage

8 (Violation of the Wage Orders and Labor Code sections 1194, 1194.2 and 1197 and Local Ordinances)

9 Plaintiff on Behalf of Himself Against all Defendants

10 33. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

11 34. California Labor Code section 1182.12 establishes the minimum wage for all industries
12 as: \$10.50 per hour for the period January 1, 2017, to December 31, 2017, inclusive; \$11.00 per hour
13 for the period January 1, 2018, to December 31, 2019, inclusive; \$12.00 per hour for the period
14 January 1, 2019 to December 31, 2019, inclusive; and \$13.00 per hour for the period January 1, 2020
15 to December 31, 2020. The Wage Orders provide similar guidance regarding the payment of
16 minimum wages.

17 35. At all times relevant to this action, Defendants failed to compensate Plaintiff and
18 Aggrieved Employees for all hours worked each workday, during thirty (30) minute unpaid meal
19 periods, and for time spent performing nonproductive tasks while being paid for piece rate production
20 work as required by Labor Code section 226.2.

21 36. At all relevant times, Defendants have been subject to Labor Code and Wage Order
22 provisions requiring compensation at no less than the legal minimum wage. Defendants violated the
23 Wage Orders and Labor Code sections 1194 and 1197 by failing to compensate Plaintiff and, on
24 information and belief, Aggrieved Employees for all hours worked at the legal minimum rates
25 established in California and various municipalities where employees worked.

26 37. At all times relevant to this action, Plaintiff and Aggrieved Employees were entitled to
27 compensation at rates that were not less than the legal minimum wage, pursuant to the Local
28 Ordinance, Wage Orders and Labor Code sections 1182.12, 1194 and 1197. Defendants violated these
provisions by failing to compensate for all hours worked.

38. Pursuant to Labor Code section 1194.2, because Plaintiff seeks to recover wages in this action resulting from Defendants' payment of a wage less than the minimum wage fixed by an order of the commission or by statute, they are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

39. Wherefore, Plaintiff seeks unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of himself.

THIRD CAUSE OF ACTION

Failure to Pay Overtime Wages

(Violation of Wage Orders and Labor Code sections 510, 1194, 1198)

Plaintiff on Behalf of Himself Against all Defendants

40. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

41. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code sections 510, 1194, 1198.

42. Labor Code section 510 provides:

[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

43. Labor Code section 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

44. Plaintiffs and, on information and belief, Aggrieved Employees regularly worked over eight hours per day and 40 hours per week while employed by Defendants. Plaintiffs and, on information and belief, Aggrieved Employees did not receive all overtime compensation owed for all overtime hours worked over eight hours per day and/or 40 hours per week during their employment

1 with Defendants.

2 45. Defendants failed to accurately calculate Plaintiff's and, on information and belief,
3 Aggrieved Employees' regular rate(s) of pay, and thereby the correct overtime rate of pay, by failing to
4 consider and incorporate all applicable compensation and hours worked (*e.g.*, uncompensated
5 nonproductive time and separately compensated rest breaks) in the calculation. At no time were
6 Plaintiff and, on information and belief, Aggrieved Employees compensated for all of the overtime
7 hours worked despite the fact that Defendants had until the next regular pay day to properly
8 compensate them for overtime.

9 46. Wherefore, Plaintiff seeks unpaid wages, interest, costs and attorneys' fees in amounts
10 to be proven at trial on behalf of himself.

11 **FOURTH CAUSE OF ACTION**

12 Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof
13 (Violation of Wage Orders and Labor Code sections 226.7 and 512)

14 Plaintiff on Behalf of Himself Against all Defendants

15 47. Plaintiff re-alleges and incorporates the above allegations above as if fully stated
16 herein.

17 48. California Labor Code section 512 and the Wage Orders prohibit employers from
18 employing workers for a work period of more than five hours per day without providing the employee
19 with a meal period of at least 30 minutes, or for a work period of more than 10 hours without a second
20 meal period of at least 30 minutes. California law requires the meal periods to be off duty, without
21 interruption, and the first meal period of the day must occur within five hours from the start of the
22 shift.

23 49. California Labor Code section 226.7 prohibits any employer from requiring any
24 employee to work during any meal period mandated by the applicable Wage Orders, and states that an
25 employer that fails to provide an employee with a required meal period in compliance with Section 512
26 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate
27 of compensation (*i.e.*, a meal period premium) for each work day that the employer does not provide a
28 compliant meal period.

50. The Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor Code

governing meal periods:

(A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See California Labor Code, Section 512)

51. At all times relevant to this action, Defendants violated the provisions of the Labor Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing to Plaintiff and, on information and belief, Aggrieved Employees with a timely, net thirty (30) minute meal period within the first five hours of work that was completely off duty, or a second net thirty (30) minute meal period when workers worked more than 10 hours per day. Plaintiff and, on information and belief, Aggrieved Employees did not waive meal periods, and Plaintiff is informed and believes and thereon alleges that valid meal period waivers were not in place or were not voluntarily consented to.

52. Defendants are liable for meal period premium wages at the regular rate(s) of pay pursuant to Labor Code section 226.7.

53. Wherefore, Plaintiff seeks unpaid wages and interest in amounts to be proven at trial on behalf of himself.

FIFTH CAUSE OF ACTION

Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof
(Violation of Wage Orders and Labor Code section 226.7)
Plaintiff on Behalf of Himself Against all Defendants

54. Plaintiff re-alleges and incorporates the above allegations above as if fully stated

1 herein.

2 55. California Labor Code section 226.7 prohibits any employer from requiring an
3 employee to work during any rest period mandated by the applicable Wage Orders:

4 Every employer shall authorize and permit all employees to take rest periods,
5 which insofar as practicable shall be in the middle of each work period. The
6 authorized rest period time shall be based on the total hours worked daily at the
7 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
8 However, a rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 1/2) hours. Authorized rest period
time shall be counted as hours worked for which there shall be no deduction
from wages.

9 56. At all times relevant to this action, Defendants failed to authorize and permit rest and
10 recovery periods to Plaintiff and, on information and belief, Aggrieved Employees with of at least 10
11 minutes of time completely off duty at a rate of one rest period for shifts greater than three and one-
12 half (3.5) hours up to six hours, two rest breaks for shifts greater than six hours up to 10 hours, and
13 three rest breaks for shifts greater than 10 hours up to 14 hours, and so on. Further, Defendants, as a
14 matter of policy or practice, failed to make good faith efforts to provide Plaintiff and Aggrieved
15 Employees with rest breaks during the middle of each four (4) hour work period, in violation of the
16 Labor Code, the Wage Orders, and California law.

17 57. Moreover, workers are entitled to shade and potable drinking water following exposure
18 to temperatures exceeding 80 degrees in an outdoor workplace. Cal. Code Regs. tit. 8, § 3395(c)-(d).
19 However, Defendant fails to provide its workers with shade and potable water during recovery periods
20 in order to prevent heat illness.

21 58. Defendants are liable for rest break premium wages at the regular rate(s) of pay
22 pursuant to Labor Code § 226.7.

23 59. Wherefore, Plaintiff seeks unpaid wages and interest in amounts to be proven at trial on
24 behalf of himself.

25 **SIXTH CAUSE OF ACTION**

26 Unlawful Conversion of Gratuities to Satisfy Wage Obligations
27 (Violation of Labor Code section 350, *et seq.* and the Wage Orders)
28 Plaintiff on Behalf of Himself Against all Defendants

60. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

1 61. Labor Code section 351 provides the following with regard to tips and gratuities:

2 No employer or agent shall collect, take, or receive any gratuity or a part
3 thereof that is paid, given to, or left for an employee by a patron, or deduct
4 any amount from wages due an employee on account of a gratuity, or
5 require an employee to credit the amount, or any part thereof, of a gratuity
6 against and as a part of the wages due the employee from the employer.
7 Every gratuity is hereby declared to be the sole property of the employee
8 or employees to whom it was paid, given, or left for. An employer that
9 permits patrons to pay gratuities by credit card shall pay the employees
10 the full amount of the gratuity that the patron indicated on the credit card
 slip, without any deductions for any credit card payment processing fees
 or costs that may be charged to the employer by the credit card company.
 Payment of gratuities made by patrons using credit cards shall be made to
 the employees not later than the next regular payday following the date
 the patron authorized the credit card payment.

11 62. Defendants maintain a compensation formula that violates Labor Code section 351 by
12 collecting, taking, or receiving gratuities (or parts thereof) that are paid, given, or left to Plaintiff and,
13 on information and belief, Aggrieved Employees by patrons. Defendants use these gratuities to
14 purportedly meet the minimum wage obligations.

15 63. Pursuant to Labor code section 350, *et seq.*, the gratuities provided by patrons to
16 Plaintiff and, on information and belief, Aggrieved Employees are owned by them and constitute their
17 property. Plaintiff and Aggrieved Employees have a right to possession of all gratuities left to them.

18 64. Defendants substantially interfered with the property of Plaintiff and, on information
19 and belief, Aggrieved Employees by knowingly or intentionally taking possession of these gratuities
20 and using them as if they belonged to Defendants.

21 65. Plaintiff and, on information and belief, Aggrieved Employees did not consent to
22 Defendants' conversion of gratuities, which are their property.

23 66. Wherefore, Plaintiff seeks money and property in amounts to be proven at trial on
24 behalf of himself.

25 **SEVENTH CAUSE OF ACTION**

26 Failure to Provide Accurate Itemized Wage Statements
 (Violation of Labor Code sections 226 and 226.2, and the Wage Orders)
27 Plaintiff on Behalf of Himself Against all Defendants

28 67. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

1 68. California Labor Code section 226(a) provides, in relevant part, that every employer
2 must furnish each employee with an itemized wage statement that accurately shows the following:

3 (1) gross wages earned, (2) total hours worked by the employee, except as
4 provided in subdivision (j), (3) the number of piece-rate units earned and any
5 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
6 deductions, provided that all deductions made on written orders of the employee
7 may be aggregated and shown as one item, (5) net wages earned, (6) the
8 inclusive dates of the period for which the employee is paid, (7) the name of the
9 employee and only the last four digits of his or her social security number or an
10 employee identification number other than a social security number, (8) the
11 name and address of the legal entity that is the employer and, if the employer is
12 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
13 and address of the legal entity that secured the services of the employer, and (9)
14 all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee....

16 69. At all times relevant to this action, Defendants have failed to provide Plaintiff and, on
17 information and belief, Aggrieved employees with wage statements that state Defendants' correct legal
18 address. Rather than listing Defendants' physical business address (633 Bair Island Road, Redwood
19 City, California 94063), Defendants' wage statements list 855 Jefferson Avenue #492, Redwood City,
20 California 94064, which is in fact a United States Postal Service Post Office Box.

21 70. At all times relevant to this action, Defendants have failed to provide accurate itemized
22 wage statements, in violation of Labor Code section 226. By failing to pay Plaintiff and, on
23 information and belief, Aggrieved Employees for all premium wages at the regular rate(s) of pay for
24 unlawfully-provided meal periods and/or rest and recovery periods, Defendants have furnished
25 Plaintiff and Aggrieved Employees with itemized wage statements that do not accurately reflect,
26 among other things, gross and net wages earned, the total number of hours worked, and the applicable
27 rates of pay and corresponding number of hours at each rate of pay.

28 71. At all times relevant to this action, Defendants have failed to provide accurate itemized
wage statements containing the information required under the Healthy Workplaces, Healthy Families
Act of 2014, California Labor Code §§ 246, *et seq.* On information and belief, Defendants failed to
accurately state the amount of accrued paid sick days available to Plaintiff and other current or former
employees in either itemized wage statements or a separate writing given each pay period.

72. 107. Pursuant to California Labor Code section 226.2(a)(1), the itemized statement required by Section 226(a) “shall, in addition to the other items specified in that subdivision, separately state the following...: (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

73. At all times relevant to this action, Defendants failed to furnish Plaintiff and, on information and belief, Aggrieved Employees with accurate itemized wage statements during pay periods in which they earned piece rate compensation that separately state the total hours of compensable rest and recovery periods, the rate of compensation of compensable rest and recovery periods, and the gross wages paid for compensable rest and recovery periods during the pay period. Additionally, when Plaintiff and Aggrieved Employees earned piece rate compensation, Defendants failed to furnish Plaintiff and Aggrieved Employees with accurate itemized wage statements that separately state the total hours of nonproductive time, the rate of compensation of nonproductive time, and the gross wages paid for nonproductive time during the pay period.

74. Defendants' failure to comply with the requirements of Labor Code sections 226, 226.2, and 246, *et seq.* and provide accurate wage statements was knowing and intentional within the meaning of that provision. Plaintiff and Aggrieved Employees are deemed to have suffered injury pursuant to Labor Code section 226(e).

75. Pursuant to Labor Code section 226(e), Plaintiff and Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

76. Wherefore, Plaintiff seeks damages, penalties, injunctive relief, attorney's fees and cost of suit in amounts to be proven at trial on behalf of himself.

EIGHTH CAUSE OF ACTION

California Unfair Competition Law

(Violation of Business & Professions Code sections 17200, *et seq.*)

Plaintiff on Behalf of Himself Against all Defendants

77. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

78. Business and Professions Code section 17200 defines “unfair competition” to include

1 any unlawful business practice.

2 79. California Business and Professions Code § 17203 allows a person who has lost money
3 or property as a result of unfair competition to bring an action to recover money or property that may
4 have been acquired by means of unfair competition.

5 80. Defendants unlawful and unfair business practices resulted in the following violations
6 of California Labor Code and Wage Order provisions:

- 7 • Failure to compensate for all hours worked, including for nonproductive time and
8 separately compensated rest and recovery periods, within the meaning of the Wage
9 Orders;
- 10 • Failure to comply with the legal minimum wage and regular rate(s) set forth under
11 California law and various local ordinances, in violation of the Wage Orders, Labor
12 Code and local ordinances;
- 13 • Failure to comply with the overtime laws set forth in the Wage Orders, Labor Code
14 and local ordinances;
- 15 • Failure to pay meal period premium wages for non-compliance with the meal period
16 provisions of the Labor Code and Wage Orders;
- 17 • Failure to pay rest and recovery period premium wages for non-compliance with the
18 rest period requirements of the Labor Code and Wage Orders;
- 19 • Failure to pay gratuities or unlawfully converting gratuities to satisfy wage
20 obligations set forth in the Labor Code;
- 21 • Failure to provide accurate itemized wage statements in violation of Labor Code
22 sections 226, 226.2, and 246, *et seq.*; and

23 81. On information and belief, at all times relevant to this action, Plaintiff has lost, and
24 Defendants have either acquired, or may have acquired, money or property in the form of earned
25 unpaid wages for all hours worked, unpaid overtime and double-time wages, unpaid meal period and
26 rest and recovery period premium wages, unpaid gratuities, by means of unfair competition as a result
27 of Defendants' unlawful failure to pay those wages in violation of the requirements of the Labor Code
28 and the Wage Orders.

82. Pursuant to Business and Professions Code section 17203, Plaintiff seeks restitution of
all these moneys and property, that Defendants either acquired, and/or may have acquired, from

1 Plaintiff by means of unfair competition in amounts subject to proof at trial. Plaintiff also seeks to
2 prevent Defendants from continuing to engage in the unlawful and/or unfair business practices alleged
3 herein.

4 83. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
5 interests of the general public in that other employers who exercise honest compliance with applicable
6 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
7 disadvantage as a result of Defendants' conduct.

8 84. Wherefore, Plaintiff seeks restitution of wages and the economic value of benefits
9 unlawfully denied to Plaintiff by Defendants in amounts subject to proof.

10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief as follows:

12 1. For an order awarding Plaintiff compensatory damages for all wages earned but not
13 paid, and all overtime and double-time wages earned and not paid, in the amount to be proven at trial,
14 pursuant to Labor Code sections 200, *et seq.*, 510, 1194, 1197, and 1198;

15 2. For an order awarding Plaintiff pre-judgment interest of ten percent (10%) on the
16 unpaid wages and overtime compensation owed under Labor Code section 218.6;

17 3. For an order awarding Plaintiff unpaid overtime, minimum wage and liquidated
18 damages under Labor Code sections 1194 and 1194.2;

19 4. For an order awarding Plaintiff attorney's fees pursuant to Labor Code section 1194;

20 5. For an order awarding Plaintiff meal period premium wages pursuant to Labor Code
21 section 226.7;

22 6. For an order awarding Plaintiff rest and recovery period premium wages pursuant to
23 Labor Code section 226.7;

24 7. For an order awarding Plaintiff all unpaid gratuities and tips, in amounts to be proven at
25 trial, pursuant to California Labor Code § 351;

26 8. For an award of statutory penalties to Plaintiff pursuant to Labor Code section 226 and
27 226.2;
28

9. For an order awarding Plaintiff injunctive relief under Labor Code 226;

10. For an order awarding Plaintiff attorneys' fees pursuant to Labor Code section 226;

11. For earned but unpaid wages as equitable relief to Plaintiff under the UCL for a period that extends the statute of limitations or recovery period for wages to four years;

12. For declaratory judgment that the actions, conduct, and practices of Defendants complained of herein constitute unfair business practices under the UCL;

13. For an injunction and order permanently restraining and enjoining Defendants from engaging in and continuing the unlawful policies and practices complained of herein;

14. For reasonable attorney's fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 226, 1194, and 2802, among others;

15. For an order awarding Plaintiff interest to the extent permitted by law;

16. For costs and expenses of this action; and

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

DEMAND FOR JURY TRIAL

Plaintiff demand a trial by jury on claims so triable.

Dated: November 10, 2023

ADVOCATES FOR WORKER RIGHTS LLP



Eric S. Trabucco
Attorneys for Plaintiff