

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Roman Shkodnik (SBN 285152)
r.shkodnik@d.law
Emma Geesaman (SBN 352715)
e.geesaman@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff ROLANDO PIZARRO UBALDO,
on behalf of himself and others similarly situated

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

ROLANDO PIZARRO UBALDO, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

SUN CITY ROSEVILLE COMMUNITY
ASSOCIATION, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. S-CV-0051804
CLASS ACTION

Assigned for All Purposes To:
Hon. Todd Irby
Dept.: 40

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Violation of Labor Code § 227.3;
6. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
7. Violation of Labor Code § 226(a);
8. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174, and
1174.5;
9. Penalties Pursuant to Labor Code § 203; and
10. Violation of Business & Professions Code §
17200 *et seq.*; and
11. Penalties Pursuant to Labor Code § 2699, *et
seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ROLANDO PIZARRO UBALDO, (hereinafter “Plaintiff”) on behalf of himself
2 and all others similarly situated (collectively, “Employees”; individually, “Employee”) complains
3 of Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants SUN CITY
8 ROSEVILLE COMMUNITY ASSOCIATION, INC., a California corporation, and DOES 1
9 through 50 (all defendants being collectively referred to herein as “Defendants”). Plaintiff alleges
10 that Defendants, and each of them, violated various provisions of the California Labor Code,
11 relevant orders of the Industrial Welfare Commission (IWC), and California Business &
12 Professions Code, and seeks redress therefore.

13 2. Plaintiff is a resident of California and during the time period relevant to this
14 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
15 California at Defendants’ facilities and offices in California. Plaintiff and the other Class members
16 worked for Defendants in Placer County, and in other nonexempt positions, throughout California,
17 and consistently worked at Defendants’ behest without being paid all wages due. More
18 specifically, Plaintiff and the other similarly situated Class members were employed by
19 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
20 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
21 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
22 subjected to the same policies and practices, and (3) endured similar violations at the hands of
23 Defendants as the other Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control during their meal breaks. Defendants thus failed to pay
26 Plaintiff and the Class members for all hours worked, and provided them with inaccurate wage
27 statements that prevented Plaintiff and the Class from learning of these unlawful pay practices.
28 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as

1 employees were not provided with the opportunity to take timely, uninterrupted, and duty-free
2 meal and rest periods as required by the Labor Code.

3 **THE PARTIES**

4 **A. The Plaintiff**

5 4. Plaintiff ROLANDO PIZARRO UBALDO has resided in California and during the
6 time period relevant to this Complaint was employed by Defendants as a non-exempt hourly
7 employee within the State of California.

8 **B. The Defendants**

9 5. Defendant SUN CITY ROSEVILLE COMMUNITY ASSOCIATION, INC.
10 (“SCRCA”) is a California corporation with its principle executive offices in Roseville, California,
11 and has been listed as the employer on the wage statements issued to Plaintiff during the relevant
12 time period. SCRCA lists an address in Roseville, California with the California Secretary of
13 State, and employs Plaintiff and the Employees in Placer County, including at Defendants’ offices
14 and facilities in Roseville, California, and throughout California and Defendants conduct business
15 throughout California.

16 6. The true names and capacities, whether individual, corporate, associate, or
17 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
18 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
19 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
20 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
21 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
22 this Complaint to reflect the true names and capacities of the Defendants designated herein as
23 Does 1 through 50 when their identities become known.

24 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
25 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
26 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
27 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
28 all respects as the employers or joint employers of Employees. Defendants, and each of them,

1 exercised control over the wages, hours or working conditions of Employees, or suffered or
2 permitted Employees to work, or engaged, thereby creating a common law employment
3 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
4 employed Employees.

5 **JURISDICTION AND VENUE**

6 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
8 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
9 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
10 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
11 obligations and liabilities giving rise to this lawsuit occurred at least in part in Placer County and
12 Defendants maintain and operate company offices and facilities in Placer County and employ
13 Plaintiff and other Class members in Placer County and throughout California.

14 **FACTUAL BACKGROUND**

15 9. The Employees who comprise the Class and Collective, including Plaintiff, are
16 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
17 Employees who work in nonexempt positions at the direction of Defendants in the State of
18 California. Plaintiff and the Class members were either not paid by Defendants for all hours
19 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
20 Plaintiff and Employees were not paid for the time that they worked “pre-shift” and “post-shift”
21 without compensation by waiting in line to clock-in and taking trash out and performing
22 maintenance and cleaning tasks post-shift. Plaintiff and Employees were not compensated for time
23 spent working while clocked out for meal breaks, specifically Defendants required Employees to
24 keep their walkie-talkies on during meal breaks and respond to any requests for work tasks to be
25 completed. Plaintiff and Employees were also not paid for orientation and time spent doing
26 trainings during meal and rest breaks. Plaintiff also contends that Defendants failed to pay Plaintiff
27 and the Class members all wages due and owing, failed to pay all accrued vacation time upon
28 termination of employment, failed to provide meal and rest breaks, and failed to furnish accurate

1 wage statements, all in violation of various provisions of the California Labor Code and applicable
2 Wage Orders.

3 10. During the course of Plaintiff and the Class members' employment with
4 Defendants, they were not paid all wages they were owed, including for all work performed and
5 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
6 labor budgets low.

7 11. As a matter of uniform Company policy, Plaintiff and the Class members were
8 required to work during their meal and rest breaks, in part due to Defendants' policy requiring
9 walkie-talkies to be left on during breaks, which were not compensated by Defendants in
10 violation of the California Labor Code. Plaintiff and the Class members also completed trainings
11 during meal and rest breaks resulting in them being on-duty. In addition, Plaintiff and the Class
12 members were not permitted to leave the premises during meal and rest breaks. Plaintiff and the
13 Class members were also not paid regular wages and overtime for the time they were required to
14 comply with other requirements imposed upon them, which they had to complete while working
15 through their meal and rest breaks and without compensation. As a result, Plaintiff and the Class
16 members worked shifts over eight (8) hours in a day and over forty (40) hours in a work week,
17 but they were not paid at the appropriate overtime rate for all such hours, including by being
18 required to perform work duties and tasks without pay and while off-the-clock. As a result,
19 Plaintiff and the Class members worked substantial overtime hours during their employment with
20 Defendants for which they were not compensated, in violation of the California Labor Code and
21 the applicable IWC Wage Orders.

22 12. As a result of the above described the daily work demands and pressures to work
23 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
24 Class members were not properly paid for all wages earned and for all wages owed to them by
25 Defendants, including when working more than eight (8) hours in any given day and/or more than
26 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
27 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
28 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and

1 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
2 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
3 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
4 Labor Code and the applicable IWC Wage Orders.

5 13. Therefore, from at least four (4) years prior to the filing of this lawsuit and
6 continuing to the present, Defendants had a consistent policy or practice of failing to pay
7 Employees for all hours worked and failing to pay minimum wage for all time worked as required
8 by California Law.

9 14. Additionally from at least four (4) years prior to the filing of this lawsuit and
10 continuing to the present, Defendants had a consistent policy or practice of failing to pay
11 Employees overtime compensation at premium overtime rates for all hours worked in excess of
12 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
13 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
14 sections of IWC Wage Orders.

15 15. Additionally from at least four (4) years prior to the filing of this lawsuit and
16 continuing to the present, Defendants have regularly required Employees to work shifts in excess
17 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
18 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
19 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
20 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
21 Defendants failed to provide or deficiently provided.

22 16. From at least four (4) years prior to the filing of this lawsuit and continuing to the
23 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
24 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
25 Defendants pay Employees premium pay for each day on which requisite rest breaks were not
26 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
27 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

28 17. Additionally, from at least four (4) years prior to the filing of this lawsuit, and

1 continuing to the present, Defendants have consistently failed to provide Employees with timely,
2 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

3 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
4 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
5 performance of their job duties for Defendants including, but not limited to, the cost of personal
6 cell phone usage and the cost of equipment including but not limited to dust mops and mop heads,
7 which were necessary to perform their duties under Defendants' employ in violation of Labor
8 Code § 2802.

9 19. Additionally, from at least three (3) years prior to the filing of this lawsuit, and
10 continuing to the present, Defendants have consistently failed to keep accurate time and wage
11 records as required by California wage-and-hour laws.

12 20. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
13 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed,
14 including all accrued vacation time, to Employees at the time of their termination or within
15 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

16 21. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
17 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5,
18 1182.12, 1185, 1194, 1194.2 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

19 22. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
20 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
21 enjoyed from their violations of Labor Code.

22 **CLASS ALLEGATIONS**

23 23. Plaintiff brings this class action on behalf of himself and all others similarly
24 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as
25 follows: all individuals employed by Defendants within the State of California at any time within
26 four (4) years of the filing of this lawsuit.

27 24. Further, Plaintiff seeks to represent the following Subclasses composed of and
28 defined as follows:

- 1 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the applicable minimum wage.
- 3 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
4 compensated for all hours worked for Defendants at the required rates of pay, including for all
5 hours worked in excess of eight in a day and/or forty in a week.
- 6 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
7 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
8 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 9 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
10 Defendants' policy and/or practice of failing to authorize and permit Employees to take
11 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
12 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.
- 13 e. Subclass 5. Vacation Wages Subclass. All Class members who were not paid all
14 accrued vacation time at the end of their employment with Defendants.
- 15 f. Subclass 6. Payroll Records Subclass. All Class members who were subject to
16 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
17 by California wage-and-hour laws.
- 18 g. Subclass 7. Wage Statement Subclass. All Class members who, within the
19 applicable limitations period, were not provided with accurate itemized wage statements.
- 20 h. Subclass 8. Failure to Reimburse for Necessary Business Expenditures Subclass.
21 All Class members who were subject to Defendants failing to reimburse for expenses necessarily
22 incurred in the performance of Employees job duties for Defendants which were necessary to
23 perform their duties under Defendants' employ.
- 24 i. Subclass 9. Termination Pay Subclass. All Class members who, within the
25 applicable limitations period, either voluntarily or involuntarily separated from their employment
26 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
27 termination.
- 28 j. Subclass 10. UCL Subclass. All Class members who are owed restitution as a

1 result of Defendants' business acts and practices, to the extent such acts and practices are found to
2 be unlawful, deceptive, and/or unfair.

3 25. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
4 modify the class description with greater particularity or further division into subclasses or
5 limitation to particular issues.

6 26. This action has been brought and may properly be maintained as a class action
7 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
8 of interest in litigation and the proposed class is easily ascertainable.

9 **A. Numerosity**

10 27. The potential members of the class as defined are so numerous that joinder of all
11 the member of the class is impracticable. While the precise number of class member has not been
12 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
13 time period relevant to this lawsuit, employed more than 100 individuals within the State of
14 California.

15 28. Accounting for employee turnover during the relevant time period increases this
16 number substantially. Plaintiff alleges that Defendants' employment records will provide
17 information as to the number and location of all class members.

18 **B. Commonality**

19 29. There are questions of law and fact common to the class that predominate over any
20 questions affecting only individual class members. These common questions of law and fact
21 include:

- 22 a. Whether Defendants failed to pay Employees minimum wages;
- 23 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 24 c. Whether Defendants failed to pay Employees overtime as required under Labor
25 Code § 510;
- 26 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
27 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
28 premium pay in lieu thereof;

- 1 e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage
2 Orders, by failing to provide Employees with requisite rest breaks or premium pay
3 in lieu thereof;
- 4 f. Whether Defendants failed to pay Employees vacation wages as required under
5 Labor Code § 227.3;
- 6 g. Whether Defendants violated Labor Code § 226(a);
- 7 h. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 8 i. Whether Defendants failed to reimburse Employees for necessary business
9 expenses;
- 10 j. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
11 wages and compensation due and owing at the time of termination of employment;
- 12 k. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 13 l. Whether Employees are entitled to equitable relief pursuant to Business and
14 Professions Code § 17200 *et seq.*;
- 15 m. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

16 **C. Typicality**

- 17 30. The claims of the named plaintiff are typical of those of the other Employees.

18 Employees all sustained injuries and damages arising out of and caused by Defendants' common
19 course of conduct in violation of statutes, as well as regulations that have the force and effect of
20 law, as alleged herein.

21 **D. Adequacy of Representation**

- 22 31. Plaintiff will fairly and adequately represent and protect the interest of Employees.
23 Counsel who represents Employees are experienced and competent in litigating employment class
24 actions.

25 **E. Superiority of Class Action**

- 26 32. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
28 questions of law and fact common to all Employees predominate over any questions affecting only

1 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
2 Defendants' illegal policies or practices of failing to compensate Employees properly.

3 33. Class action treatment will allow those persons similarly situated to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY MINIMUM WAGES**
8 **(Against All Defendants)**

9 34. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 35. Defendants failed to pay Employees minimum wages for all hours worked.
12 Defendants had a consistent policy of misstating Employees time records and failing to pay
13 Employees for all hours worked. Employees would work hours and not receive wages, including
14 as alleged above in connection with working during meal breaks due to Defendants' policy
15 requiring Employees to keep walkie-talkies on during meal breaks and to respond to requests for
16 work tasks to be completed. Plaintiff and Employees also worked "pre-shift" and "post-shift"
17 without compensation by waiting in line to clock-in and taking trash out and performing
18 maintenance and cleaning tasks post-shift. Plaintiff and Employees were also not paid for
19 orientation and time spent doing trainings during meal and rest breaks. Additionally, Defendants
20 failed to pay Employees for hours worked during alleged meal periods for which Employees
21 were denied, as also addressed herein. Moreover, Defendants did not pay Plaintiff and
22 Employees at the applicable minimum wage for all hours worked. Defendants' uniform pattern of
23 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a
24 whole, as a result of implementing a uniform policy and practice that denied accurate
25 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

26 36. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
27 states:

28 The minimum wage for employees fixed by the commission is the
minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

1 37. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 38. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage, any
7 employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

10 39. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 40. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages because of
14 the payment of a wage less than the minimum wages fixed by an
15 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

16 41. Defendants have the ability to pay minimum wages for all time worked and have
17 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
18 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

19 42. Wherefore, Employees are entitled to recover the unpaid minimum wages
20 (including double minimum wages), liquidated damages in an amount equal to the minimum
21 wages unlawfully unpaid, interest thereon, and reasonable attorney's fees and costs of suit
22 pursuant to California Labor Code § 1194(a).

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

25 **(Against All Defendants)**

26 43. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 44. By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
2 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
3 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
4 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
5 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
6 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
7 paying Employees wages for all hours worked including time off the clock working “pre-shift”
8 and “post-shift” without compensation by waiting in line to clock-in and taking trash out and
9 performing maintenance and cleaning tasks post-shift. Employees were also not compensated for
10 time spent working while clocked out for meal breaks due to Defendants’ policy requiring
11 Employees to keep walkie-talkies on during meal breaks and respond to requests for work tasks
12 to be completed. Plaintiff and Employees were also not paid for orientation and time spent doing
13 trainings during meal breaks. As a result, Employees regularly worked over 8 hours on a given
14 day without receiving overtime compensation.

15 45. Defendants’ failure to pay compensation in a timely fashion also constituted a
16 violation of California Labor Code § 204, which requires that all wages shall be paid
17 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
18 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
19 and overtime compensation earned by Employees. Each such failure to make a timely payment of
20 compensation to Employees constitutes a separate violation of California Labor Code § 204.

21 46. Employees have been damaged by these violations of California Labor Code §§
22 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

23 47. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
24 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
25 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
26 reasonable attorneys’ fees and costs.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 48. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 49. Employees regularly worked shifts greater than five (5) hours and greater than ten
7 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
8 more than five (5) hours without providing him or her with a meal period of not less than thirty
9 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
10 meal period of not less than thirty (30) minutes.

11 50. Defendants failed to provide Employees with meal periods as required under the
12 Labor Code. Employees were consistently required to work through their meal periods which they
13 were consistently denied. Employees were also required to take meal periods after working well
14 beyond the five (5) hour shifts. In addition, Employees meal periods were consistently interrupted
15 and were on-duty due to Defendants' policy requiring Employees to keep their walkie-talkies on
16 during meal periods and respond to requests for work tasks to be performed. Plaintiff and
17 Employees also performed trainings while on meal periods and were not permitted to leave the
18 premises during meal periods. Furthermore, Employees were regularly required to work for more
19 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
20 period as required by law.

21 51. Moreover, Defendants failed to compensate Employees for each meal period not
22 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
23 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
24 employee a meal period in accordance with this section, the employer shall pay the employee one
25 hour of pay at the employee's regular rate of compensation for each workday that the meal period
26 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
27 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
28 and 20 of the applicable IWC Wage Order.

1 52. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
2 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
3 period not provided or deficiently provided, a sum to be proven at trial.

4 **FOURTH CAUSE OF ACTION**

5 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

6 **(Against All Defendants)**

7 53. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 54. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
10 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
11 not less than ten (10) minutes for each consecutive four (4) hour shift.

12 55. Defendants failed to provide Employees with timely, uninterrupted rest breaks of
13 not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants required
14 Employees to keep their walkie-talkies on during rest breaks and respond to requests for work
15 tasks to be performed, resulting in on-duty and interrupted rest breaks. Plaintiff and Employees
16 also performed trainings while on rest breaks and were not permitted by Defendants to leave the
17 premises during rest breaks.

18 56. Moreover, Defendants failed to compensate Employees for each rest period not
19 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
20 Wage Orders, which provide that, if an employer fails to provide an employee a rest break in
21 accordance with this section, the employer shall pay the employee one hour of pay at the
22 employee's regular rate of compensation for each workday that the rest period is not provided.
23 Defendants failed to compensate the Employees in the Class for each rest break not provided or
24 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
25 Order.

26 57. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
27 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day
28 worked without the required rest breaks, a sum to be proven at trial.

FIFTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES
(Against All Defendants)

58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

59. Pursuant to California Labor Code § 227.3, whenever a contract of employment or employment policy provides for paid vacation and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with said contract of employment or policy respecting eligibility or time served.

60. Defendants failed to pay Employees all accrued and vested vacation as wages at the time of termination in violation of Labor Code § 227.3.

61. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor Code § 227.3.

SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES
IN VIOLATION OF LABOR CODE § 2802
(Against All Defendants)

62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

63. Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

64. Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely the cost of personal cell phone usage and the cost of equipment including but not limited to dust mops and mop heads, which were necessary to perform their duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

1 65. As a result of the unlawful acts of Defendants, Employees have been deprived of
2 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
3 plus interest and penalties thereon, attorneys' fees, and costs.

4 **SEVENTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 226(a)**
6 **(Against All Defendants)**

7 66. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 67. California Labor Code § 226(a) requires an employer to furnish each of his or her
10 employees with an accurate, itemized statement in writing showing the gross and net earnings,
11 total hours worked, and the corresponding number of hours worked at each hourly rate; these
12 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
13 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
14 statements may be given to the employee separately from the payment of wages; in either case the
15 employer must give the employee these statements twice a month or each time wages are paid.

16 68. Defendants failed to provide Employees with accurate itemized wage statements in
17 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
18 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
19 periods and rest breaks, all of which Defendants knew or reasonably should have known were
20 owed to Employees, as alleged hereinabove. The wage statements provided to Employees were
21 confusing and required Employees to engage in discovery and refer to outside sources to verify
22 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

23 69. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
24 Employees suffered injuries, including among other things confusion over whether they received
25 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
26 forcing them to make mathematical computations to analyze whether the wages paid in fact
27 compensated them correctly for all hours worked.

28 70. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover

1 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
2 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
3 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
4 award of costs and reasonable attorneys' fees.

5 71. With respect to violations of Labor Code § 226, Labor Code § 226.3 imposes a
6 civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for
7 each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
8 employee for each pay period.

9 72. Plaintiff is seeking penalties against Defendants under Labor Code § 226.3, and
10 any other applicable statute allowing recovery of penalties as alleged herein in an amount to be
11 shown according to proof.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174** 14 **and 1174.5**

15 **(Against All Defendants)**

16 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
17 full herein.

18 74. California Labor Code § 1174 requires that all employers shall keep accurate time
19 and wage records for all employees. California Labor Code § 1174.5 further requires that any
20 employee suffering injury due to a willful violation of the aforementioned obligations may seek
21 damages, including civil penalties, from the employer.

22 75. During the course of Plaintiff's and Employees' employment, Defendants
23 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
24 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
25 overtime, and premium pay as discussed above.

26 76. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
27 knew wages to be due but failed to pay them.

28 77. Accordingly, Defendants are liable for civil penalties pursuant to the California

1 Labor Code including § 1174.5 for the three (3) years prior to the filing of this Complaint.

2 **NINTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 203**

4 **(Against All Defendants)**

5 78. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 79. Numerous Employees are no longer employed by Defendants; they either quit
8 Defendants' employ or were fired therefrom.

9 80. Defendants failed to pay these Employees all wages due and certain at the time of
10 termination or within seventy-two (72) hours of resignation.

11 81. The wages withheld from these Employees by Defendants remained due and owing
12 for more than thirty (30) days from the date of separation of employment.

13 82. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
14 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
15 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
16 to thirty (30) days from the date they were due.

17 **TENTH CAUSE OF ACTION**

18 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

19 **(Against All Defendants)**

20 83. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 84. Plaintiff, on behalf of himself, Employees, and the general public, brings this claim
23 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of Defendants as alleged in
24 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the
25 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
26 meaning of Code of Civil Procedure § 1021.5.

27 85. Plaintiff is a "person" within the meaning of Business & Professions Code
28 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive

1 relief, restitution, and other appropriate equitable relief.

2 86. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
3 business practices.

4 87. Wage-and-hour laws express fundamental public policies. Paying employees their
5 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
6 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
7 to enforce minimum labor standards, to ensure that employees are not required or permitted to
8 work under substandard and unlawful conditions, and to protect law-abiding employers and their
9 employees from competitors who lower costs to themselves by failing to comply with minimum
10 labor standards.

11 88. Defendants have violated statutes and public policies. Through the conduct alleged
12 in this Complaint Defendants have acted contrary to these public policies, have violated specific
13 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
14 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
15 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
16 guaranteed to all employees under the law.

17 89. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
18 violation of the Business & Professions Code § 17200 *et seq.*

19 90. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
20 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
21 care should have known that their conduct was unlawful; therefore their conduct violates the
22 Business & Professions Code § 17200 *et seq.*

23 91. As a proximate result of the above-mentioned acts of Defendants, Employees have
24 been damaged, in a sum to be proven at trial.

25 92. Unless restrained by this Court, Defendants will continue to engage in such
26 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
27 should make such orders or judgments, including the appointment of a receiver, as may be
28 necessary to prevent the use by Defendants or their agents or employees of any unlawful or

1 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
2 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
3 have unlawfully failed to pay.

4 **ELEVENTH CAUSE OF ACTION**

5 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***

6 **(Against All Defendants)**

7 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 94. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
10 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
11 alleged violators, Defendants.

12 95. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
13 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
14 penalty provisions, without limitation, based on the following California Labor Code sections:
15 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12,
16 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

17 96. The penalties shall be allocated as follows: 75% to the Labor and Workforce
18 Development Agency (LWDA) and 25% to the affected employee.

19 97. Employees also seek any and all penalties and remedies set forth in Labor Code §
20 558, which states:

21 (a) Any employer or other person acting on behalf of an employer who
22 violates, or causes to be violated, a section of this chapter or any provision
23 regulating hours and days of work in any order of the Industrial Welfare
24 Commission shall be subject to a civil penalty as follows: (1) For any initial
25 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
26 which the employee was underpaid in addition to an amount sufficient to recover
underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
each underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages. (3)
Wages recovered pursuant to this section shall be paid to the affected employee.

27 (b) If upon inspection or investigation the Labor Commissioner determines that
28 a person had paid or caused to be paid a wage for overtime work in violation of any
provision of this chapter, or any provision regulating hours and days of work in any
order of the Industrial Welfare Commission, the Labor Commissioner may issue a

1 citation. The procedures for issuing, contesting, and enforcing judgments for
2 citations or civil penalties issued by the Labor Commissioner for a violation of this
chapter shall be the same as those set out in Section 1197.1.

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

5 98. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
6 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
7 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
8 for each violation in a subsequent citation, for which the employer fails to provide the employee a
9 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the
10 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

11 99. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
12 LWDA and Defendants postmarked on December 12, 2023. The LWDA has not provided notice
13 of its intent to investigate the alleged violations within 65 calendar days of the postmark date of
14 the letters.

15 RELIEF REQUESTED

16 WHEREFORE, Plaintiff prays for the following relief:

- 17 1. For an order certifying this action as a class action;
- 18 2. For compensatory damages in the amount of the unpaid minimum wages for work
19 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
20 the filing of this action, as may be proven;
- 21 3. For liquidated damages in the amount equal to the unpaid minimum wage and
22 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 23 4. For compensatory damages in the amount of the hourly wage made by Employees
24 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
25 years prior to the filing of this action, as may be proven;
- 26 5. For compensatory damages in the amount of the hourly wage made by Employees
27 for each day requisite rest breaks were not provided or were deficiently provided where no
28 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may

1 be proven;

2 6. For penalties pursuant to Labor Code § 227.3, as may be proven;

3 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

4 8. For penalties pursuant to Labor Code § 226.3, as may be proven;

5 9. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
6 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

7 10. For penalties pursuant to Labor Code § 1174.5, as may be proven;

8 11. For restitution for unfair competition pursuant to Business & Professions Code
9 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

10 12. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

11 13. For compensatory damages in the amount of all previously unreimbursed business
12 expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants
13 from four (4) years prior to the original filing of this action, as may be proven;

14 14. For an order enjoining Defendants and their agents, servants, and employees, and
15 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
16 duties adumbrated in this Complaint;

17 15. For all general, special, and incidental damages as may be proven;

18 16. For an award of pre-judgment and post-judgment interest;

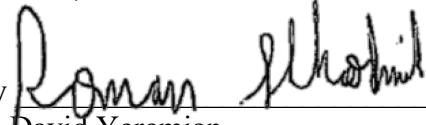
19 17. For an award providing for the payment of the costs of this suit;

20 18. For an award of attorneys' fees; and

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

22
23 DATED: February 15, 2024

D.LAW, INC.

24
25 By 
26 David Yeremian
27 Roman Shkodnik
28 Emma Geesaman
Attorneys for Plaintiff
ROLANDO PIZARRO UBALDO
and the putative class

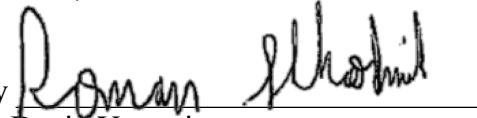
DEMAND FOR JURY TRIAL

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

DATED: February 15, 2024

D.LAW, INC.

By

A handwritten signature in black ink, appearing to read "Roman Shkodnik", written over a horizontal line.

David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
ROLANDO PIZARRO UBALDO
and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Meagan Bainbridge
mbainbridge@weintraub.com

Tomiwa Aina
OAina@weintraub.com

Ramona Carrillo
rcarrillo@weintraub.com

Cynthia Cervantes
CCervantes@weintraub.com

[X] (ONLY BY ELECTRONIC TRANSMISSION) I electronically served the foregoing document in PDF format. I caused a true copy of the foregoing document(s) listed above to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address(es) shown above. Each transmission was reported as complete and without error.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Natalia Bermudes
Natalia Bermudes