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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Paola Iniguez Solorio, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSE IVAN ARROYO, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

TIJUANAZO INC., a California corporation,
EL TIJUANAZO CORP, a California
corporation, BIRRIERIA EL TIJUANAZO, an
unknown business entity; and DOES 1 through
50, inclusive,

Defendants.

CASE NUMBER: CIVSB2404841

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Pay and Include COVID-19 Supplemental Sick Pay on Wage Statements
10. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
11. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

12. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a class and representative action brought by Jose Ivan Arroyo (“Plaintiff”), on behalf of himself and all other similarly situated individuals, against Tijuana Inc. (“Tijuana”), El Tijuana Corp. (“El Tijuana”) and Birrieria El Tijuana (“Birrieria El”) (hereinafter referred to as collectively as “Defendants”), in order to hold Defendants accountable for wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on her respective personal knowledge.

2. Defendants operate private, for-profit fast casual Mexican food dine in and dine out at four (4) restaurant located in Colton, Moreno Valley, Murrieta and Anaheim, California.

3. At all relevant times herein, Defendants have implemented common policies and practices designed to maximize profits at the expense of its non-exempt employees. These policies and practices have resulted in systematic violations of California’s wage and hour laws.

4. Defendants maximize profits by cutting labor costs through understaffing, denying meal and rest breaks, cheating its non-exempt employees out of wages and premiums, failing to provide accurate and itemized wage statements, failing to provide COVID-19 supplemental leave under pursuant to the California Labor Code and related violations of California wage and hour laws. For instance, in order to minimize labor costs, Defendants have implemented unlawful policies with respect to meal and rest breaks. Defendants require its non-exempt employees to work through meal and rest breaks, take their meal periods and breaks at times after the start of the fifth hour from the beginning of their shifts, and/or their meal and rest periods are cut short due to staffing shortages and the needs of Defendants in assisting customers. As a result, Plaintiff and other non-exempt employees have been denied the ability to take the legally-compliant meal and rest breaks that they were and are entitled to take.

5. Defendants also fail to compensate non-exempt employees at their regular rate of pay for meal and rest period premium payments, to the extent any are paid, and non-discretionary bonus payments are not calculated into the regular rate of pay for non-exempt employees which results in the systematic underpayment of wages to Plaintiff and other non-exempt employees. Defendants also

1 willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt employees
2 perform as a direct consequence of Defendants inadequate staffing and imposition of an unreasonable
3 workload. Moreover, Defendants uniformly failed to pay Plaintiff and other aggrieved employees
4 proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock work that
5 Plaintiff and other non-exempt employees perform as a direct consequence of Defendants
6 understaffing and imposition of an unreasonable workload. Finally, Defendants have failed to pay
7 final wages to Plaintiff and other aggrieved employees who were employed by Defendants.

8 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
9 herself and a Class of all current and former non-exempt employees of Defendants during the
10 applicable limitations period to compensate these workers for the wages Defendants has stolen from
11 the Class members and to protect current and future workers from being subjected to similar unlawful
12 working conditions perpetrated by Defendants.

13 **JURISDICTION AND VENUE**

14 7. The Superior Court of the State of California has jurisdiction in this matter because
15 Plaintiff is a resident of the State of California, and Defendants are licensed to do business under the
16 laws of the State of California. No federal question is at issue because Plaintiff's claims are based solely
17 on California law.

18 8. Venue is proper in this judicial district and the County of San Bernardino because
19 Plaintiff, and persons similarly situated, performed work for Defendants in San Bernardino County,
20 Defendants maintain their corporate headquarters and have a restaurant located within San
21 Bernardino County, and Defendants illegal payroll policies and practices, which are the subject of
22 this action were applied, at least in part, to Plaintiff, and other persons similarly situated, in the
23 County of San Bernardino.

24 **THE PARTIES**

25 9. During the statute of limitations period, Plaintiff was employed by Defendants as a
26 Server, a non-exempt position, at the restaurant owned and operated by Defendants in Moreno Valley,
27 California.

28 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, Tijuano is and

1 at all times relevant hereto was, a corporation organized and existing under the laws of the State of
2 California.

3 11. Plaintiff is informed and believes, and thereon alleges, that Defendant, El Tijuano, is
4 and at all times relevant hereto was, a company organized and existing under the laws of the State of
5 California.

6 12. Plaintiff is informed and believes, and thereon alleges, that Defendant, Birrieria El
7 Tijuano, is and at all times relevant hereto was, an unknown business entity organized and existing
8 under the laws of the State of California.

9 13. At all relevant times herein, Defendants were the joint employers of Plaintiff and the
10 other Class members. Defendants were the alter egos, divisions, affiliates, integrated enterprises,
11 joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
12 partners, joint venturers, and/or guarantors, actual or ostensible, of each other.

13 14. Each Defendant was completely dominated by his, her or its co-Defendants, and each
14 was the alter ego of the other. Moreover, at all material times there has been extensive interrelation of
15 operations, common management, centralized control of labor relations with respect to Plaintiff and
16 Class members, and common ownership or financial control between all Defendants.

17 15. At all times relevant herein, Defendants have jointly owned and operated four (4) or
18 more restaurants located at the following addresses:

- 19 a. 479 South La Cadena Drive
20 Colton, California 92324
- 21 b. 23923 Sunnymead Blvd.
22 Moreno Valley, California 92553
- 23 c. 39872 Los Alamos Road, Suite 14
24 Murrieta, California 92562
- 25 d. 676 South State College Blvd., Suite 101
26 Anaheim, California 92806

27 16. Plaintiff is informed and believes, and based thereon alleges, in all respects pertinent
28 to this action, Defendants jointly employed Plaintiff and the other Class members, and as the agent of

1 the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent
2 hereto, and as joint employers are jointly liable for the violations as alleged herein.

3 17. Plaintiff is informed and believe, and based thereon alleges, that each defendant sued
4 in this action, including each defendant sued by the fictitious names DOES 1 through 50, inclusive, is
5 directly or indirectly responsible in some manner for the occurrences, controversies and damages
6 alleged herein, in various capacities, including but not limited to serving as joint employer, joint
7 tortfeasor, single enterprise, alter ego, or agents of the other defendants. Each defendant approved,
8 participated in, controlled, or ratified the acts of all other defendants.

9 18. As a direct and proximate result of the unlawful actions of Defendants, and each of
10 them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in
11 amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

12 19. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
13 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
14 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
15 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
16 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
17 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
18 capacities of such DOE defendants when ascertained.

19 **CLASS ACTION ALLEGATIONS**

20 20. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of himself
21 and the following Class:

22 All current and former non-exempt employees of Defendants who performed
23 work for Defendants in the State of California during the relevant statute of
limitations period.

24 21. Plaintiff reserves the right to name additional Class representatives as may be
25 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the
26 proposed Class and/or add subclasses before the Court determines whether certification is
27 appropriate.
28

1 22. This action is appropriately suited for a class action because:

2 A. The proposed Class is a significant number. Plaintiff is informed and believes
3 that the proposed Class consists of at least one (100) hundred current and former non-exempt
4 employees, rendering joinder impractical.

5 B. This action involves common questions of law and fact to the proposed Class
6 because the action focuses on Defendants systematic course of illegal payroll practices and policies,
7 which was applied to all non-exempt employees in uniform violation of the California Labor Code,
8 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair
9 business practices arising from such violations. Here are a few common questions of law and fact
10 that will drive resolution of this action:

- 11 1. Whether Defendants failed to provide non-exempt employees with
12 legally compliant meal periods and rest breaks, and whether
13 Defendants properly paid premium pay as a result of missed and non-
14 compliant meal periods and rest breaks;
- 15 2. Whether Defendants failed to pay overtime and minimum wages
16 non-exempt employees in compliance with California law;
- 17 3. Whether Defendants failed to maintain required records and accurate
18 wage statements for non-exempt employees;
- 19 4. Whether Defendants paid all wages due at the time of separation to
20 the non-exempt employees;
- 21 6. Whether Defendants paid supplemental COVID-19 sick leave;
- 22 7. Whether Defendants failed to reimburse reasonable and necessary
23 business expenses; and
- 24 8. Whether Defendants engaged in unfair and/or unlawful business
25 practices.

26 C. Plaintiff's claims are typical of the proposed Class because Defendants
27 subjected all of its non-exempt employees to the similar and overlapping violations of the California
28 Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

1 D. Plaintiff is able to fairly and adequately protect the interests of all members of
2 the proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain
3 full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has
4 also retained counsel that is experienced in wage and hour class action litigation.

5 **FIRST CAUSE OF ACTION**

6 **Failure to Provide Required Meal Periods**
7 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11**
8 **And All Other Applicable Wage Orders and Applicable Sections]**
9 ***(On Behalf of Plaintiff and the Class against all Defendants)***

10 23. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 22 (A-D).

12 24. During the statute of limitations period, as part of Defendants unlawful policies and
13 practices to deprive its non-exempt employees of all wages earned and due, Defendants required,
14 permitted or otherwise suffered Plaintiff and Class members to perform work during their meal
15 periods, to completely skip their meal periods, to take late and short meal periods, and Defendants
16 have otherwise failed to provide the required meal periods to Plaintiff and Class members as required
17 under California Labor Code §§ 226.7, 512, and §§10-11 of all applicable IWC Orders.

18 25. Defendants have implemented several common policies and practices that have caused
19 Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods.
20 For example, Defendants have failed to adequately inform Plaintiff and Class members of their rights
21 to take meal periods under California law. Defendants also understaffed their restaurants such that
22 Plaintiff and Class members are given so much work to complete that they regularly miss or take
23 non-compliant meal periods. Plaintiff and Class members are so busy with their assigned duties and
24 responsibilities cooking, preparing food, waiting on customers, etc., which must be completed within
25 their scheduled shifts they are forced to skip their meal periods altogether, to take them after working
26 longer than five (5) hours, to perform work during their meal periods, or return to work after taking
27 less than a thirty (30) minute meal period.

28 26. Further, Defendants systemically deprived Plaintiff and Class members of the
opportunity to take second meal periods even though they regularly work shifts in excess of ten (10)

1 hours.

2 27. Despite work conditions that systematically result in missed and non-compliant meal
3 periods, and in order to keep labor costs down, Defendants have implemented a policy and practice of
4 discouraging payment of meal period premium payments. Moreover, Defendants, to the extent any
5 meal period premiums are paid, fail to pay such premiums at the regular rate of pay of the Class
6 members. In short, Defendants have violated California Labor Code §§ 226.7, §§ 10 and 11 of all
7 applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
8 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and
9 permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation
10 at the proper regular rate of pay for each workday that such a meal period was not authorized or
11 permitted. Defendants further violated California Labor Code sections 226.7, 510, 1194, 1197, and
12 §§ 10 and 11 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class
13 members for all hours worked during their meal periods.

14 28. As a proximate result of the aforementioned violations, Plaintiff and Class members
15 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
16 interest, penalties, expenses, and costs of suit.

17 **SECOND CAUSE OF ACTION**

18 **Failure to Provide Required Rest Breaks**

19 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12 And**
20 **All Other Applicable Wage Orders and Applicable Sections]**
21 ***(On Behalf of Plaintiff and the Class against all Defendants)***

22 29. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in paragraphs 1 through 28.

24 30. At all times relevant herein, as part of Defendants illegal policies and practices to
25 deprive its non-exempt employees of all wages earned and due, Defendants failed to permit Plaintiff
26 and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512,
27 and §§ 11-12 of all applicable IWC Wage Orders.

28 31. As with meal periods, Defendants' policies and practices caused Plaintiff and Class
members to miss or otherwise take non-compliant rest periods by, among other things, giving them

1 unreasonable amounts of work that had to be completed within their shift such that rest periods simply
2 could not be taken. This was the result of systematic understaffing at each of the restaurants.
3 Further, as set forth above, Defendants implemented skeletal staffing policies, which resulted in the
4 inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendants did
5 not adequately notify Plaintiff and Class members of their rights to take rest periods, and
6 systematically denied them the opportunity to take rest periods.

7 32. Defendants further violated California Labor Code § 226.7, IWC Wage Order No. 5-
8 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
9 failing to pay Plaintiff and Class members who were not provided with a rest break, in accordance
10 with the applicable wage order, one additional hour of compensation at the proper regular rate of pay
11 for each workday that a rest break was not provided.

12 33. As a proximate result of the aforementioned violations, Plaintiff and Class members
13 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
14 interest, penalties, expenses, and costs of suit.

15 **THIRD CAUSE OF ACTION**
16 **Failure to Pay Overtime Wages**
17 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3**
18 **And All Other Applicable Wages Orders And Sections]**
19 **(On Behalf of Plaintiffs and the Class against all Defendants)**

20 34. Plaintiff incorporates herein by specific reference, as though fully set forth, the
21 allegations in paragraphs 1 through 33.

22 35. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage
23 orders, Defendants are required to compensate Plaintiff and Class members for all overtime, which is
24 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
25 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
26 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
27 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
28 work in any workweek.

1 36. During the statute of limitations period, Defendants failed to compensate Plaintiff and
2 Class members for all overtime hours worked as required under the foregoing provisions of the
3 California Labor Code and IWC Wage Orders by, among other methods, failing to pay overtime at
4 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
5 510, 1194 and IWC Wage Order No. 4-2001, § 3 and all other applicable wage orders, requiring,
6 permitting or suffering Plaintiff and Class members to work off-the-clock, and to work through meal
7 and rest breaks, but not compensating them for this time, illegally and inaccurately recording time in
8 which Plaintiff and Class members worked, failing to pay the regular overtime rate of pay based upon
9 Plaintiff and Class members earned non-discretionary bonuses, and other methods to be discovered.

10 37. In violation of California law, Defendants have knowingly and willfully refused to
11 perform its obligations to compensate Plaintiff and Class members for all wages earned and all hours
12 worked at the legally required rates of pay. As a proximate result, Plaintiff and Class members have
13 suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages,
14 lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to
15 fully perform their obligations under state law, all to their respective damages in amounts according
16 to proof at time of trial, and within the jurisdiction of this Court.

17 38. Defendants conduct described herein violates California Labor Code §§ 510, 1194,
18 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§
19 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code
20 and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of
21 wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of
22 suit.

23 **FOURTH CAUSE OF ACTION**

24 **Failure to Pay Minimum Wages**

25 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001,**
26 **And § 4 And All Other Applicable Wages Orders And Sections]**
27 ***(On Behalf of Plaintiffs and the Class against all Defendants)***

28 39. Plaintiffs incorporate herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 38.

1 40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 5-2001
2 and all applicable wage orders and sections, payment to an employee of less than the applicable
3 minimum wage for all hours worked in a payroll period is unlawful.

4 41. During the statute of limitations period, the hourly rates for Plaintiffs and Class
5 members were at or slightly above minimum wage. Based on this common practice, Defendants
6 failed to actually pay Plaintiffs and Class members minimum wages for all hours worked by
7 requiring, permitting or suffering Plaintiffs and Class members to work off-the-clock, such as
8 requiring them to work through meal and rest breaks, but not compensating them for this time as
9 Plaintiff and the Class members were required to write down the time of their work shifts on their
10 time cards which did not accurately reflect their actual hours worked, and failing to include this time
11 in all hours worked, unlawfully rounding their time, failing to pay the accurate rate of pay based upon
12 earned non-discretionary bonus payments and other methods to be discovered.

13 42. Defendants' conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
14 of IWC Wage Order No. 5, and any other applicable IWC Wage Order. As a proximate result of the
15 aforementioned violations, Plaintiff and Class members have been damaged in an amount according
16 to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
17 and any other applicable wage orders and law, Plaintiffs and Class members are entitled to recover
18 the unpaid balance of wages owed to them by Defendants, plus interest, penalties, attorneys' fees,
19 expenses, and costs of suit.

20 **FIFTH CAUSE OF ACTION**
21 **Failure to Pay Timely Wages**
22 **[Cal. Lab. Code §§ 204, 210]**
 (On Behalf of Plaintiff and the Class against all Defendants)

23 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in paragraphs 1 through 42.

25 44. California Labor Code § 204 provides that all wages earned by any person in any
26 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
27 due upon termination of an employee, are due and payable between the 16th and 26th day of the
28 month during which the labor was performed. California Labor Code § 204 further provides that all

1 wages earned by any person in any employment between the 16th and the last day, inclusive, of any
2 calendar month, other than those wages due upon termination of an employee, are due and payable
3 between the 1st and the 10th day of the following month. California Labor Code § 204 further
4 provides that all wages eared for labor in excess of the normal work period shall be paid no later than
5 the payday for the next regular payroll period.

6 45. During the statute of limitations period, Defendants, among other things, willfully
7 failed to pay Plaintiff and Class members all wages earned and due to them, including but not limited
8 to, meal and rest break premiums, overtime and minimum wages, and payment for work performed
9 off-the-clock, within any time period permissible under Labor Code § 204.

10 46. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
11 Class members are entitled to all available statutory penalties, including but not limited to, civil
12 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
13 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of costs,
14 expenses, and reasonable attorneys' fees.

15 **SIXTH CAUSE OF ACTION**
16 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
17 **[Cal. Lab. Code §§ 201-203]**
(On Behalf of Plaintiff and the Class against all Defendants)

18 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 46.

20 48. Pursuant to California Labor Code §§ 201, 202, and 203, Defendants is required to pay
21 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
22 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
23 the time of discharge are due and payable immediately.

24 49. Furthermore, pursuant to California Labor Code § 202, Defendants is required to pay
25 all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits
26 his or her employment, unless the employee provided seventy-two (72) hours previous notice of his
27 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
28 quitting.

1 50. As a result, Plaintiff and Class members are entitled to all available statutory penalties,
2 including the waiting time penalties provided in California Labor Code § 203, together with interest
3 thereon, as well as other available remedies.

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**
6 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 6 And**
7 **All Applicable Wage Orders And Sections]**
8 ***(On Behalf of Plaintiff and the Class against all Defendants)***

9 51. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 50.

11 52. During the statute of limitations period, as part of Defendants' illegal payroll policies
12 and practices to deprive Plaintiff and Class members of all wages earned and due, Defendants
13 knowingly and intentionally failed to maintain records as required under California Labor Code §§
14 226, 1174, and §§ 6 and 7 of the applicable IWC Wage Orders, including but not limited to, the
15 following records: total daily hours worked by each non-exempt employee; applicable rates of pay;
16 all deductions; meal periods; time records showing when each non-exempt employee begins and ends
17 each workday; accurate itemized wage statements, and other missing records yet to be discovered.

18 53. As a proximate result of Defendants unlawful actions and omissions, Plaintiff and
19 Class members have been damaged in an amount according to proof at trial, and are entitled to all
20 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to
21 all available penalties, including but not limited to, penalties pursuant to California Labor Code §§
22 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,
23 including but not limited to those provided in California Labor Code § 226(e), as well as other
24 available remedies.

25 **EIGHTH CAUSE OF ACTION**

26 **Failure to Furnish Accurate Itemized Wage Statements**
27 **[Cal. Lab. Code §§ Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6;**
28 **IWC Wage Order No. 5-2001, § 6 And**
29 **All Applicable Wage Orders And Sections]**
30 ***(On Behalf of Plaintiff and the Class against all Defendants)***

31 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the

1 allegations in paragraphs 1 through 53.

2 55. During the statute of limitations period, Defendants routinely failed to provide
3 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing showing
4 each employee's gross wages earned, total hours worked, overtime hours worked and paid, all
5 deductions made, net wages earned, and all applicable and accurate hourly rates in effect during each
6 pay period and the corresponding number of hours worked at each hourly rate, the full legal name
7 and address of the employer on the wage statements; all in violation of California Labor Code § 226
8 and §§ 6 and 7 of the applicable IWC Wage Orders.

9 56. Defendants' pay stubs violate Labor Code § 226 because Defendants routinely and
10 intentionally fail to provide Plaintiff and Class members with proper meal and rest breaks but fail to
11 include in their wage statements one (1) additional hour of compensation at their regular rates of pay
12 for each non-compliant meal or rest break, fail to include all regular and overtime hours worked off
13 the clock by Plaintiff and the other Class members, in addition to failing to provide regular and
14 overtime wages, violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon Defendants failure
15 to include information related to COVID-19 supplemental sick pay; rendering the wage statements
16 inaccurate; and other violations yet to be discovered.

17 57. Defendants knowingly and intentionally failed to provide Plaintiff and Class members
18 with timely, accurate, and itemized wage statements in accordance with California Labor Code §
19 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were
20 being paid for, among other things, all of the hours they worked and at the proper rates of pay.

21 58. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
22 Class members have been damaged in an amount according to proof at trial, and seek all wages
23 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
24 available penalties, including but not limited to penalties pursuant to California Labor Code §§
25 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including
26 but not limited to those provided in California Labor Code § 226(e), as well as other available
27 remedies.

NINTH CAUSE OF ACTION
Failure To Provide Supplemental COVID-19 Sick Leaves
[Cal. Lab. Code §§246, 248.1, 248.2 and 248.6]
(On Behalf of Plaintiff and the Class against all Defendants)

59. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 58.

60. Plaintiff is informed and believes Defendants knowingly and intentionally failed in their affirmative obligation provide and pay paid sick leave and Covid-19 Supplemental Sick Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

61. Defendants failed to pay Plaintiff and Class Members paid sick leave at one of the lawful rates set forth in the statute because Defendants failed to include in their calculation the commissions and additional remuneration received by Plaintiff and the Class Members.

62. Furthermore, Defendants knowingly and intentionally failed in their affirmative obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation of Labor Code sections 246, 247.5, 248.1, 248.2, and 248.6. 84. Labor Code section 248.1 requires employers to provide up to 80 hours of Covid19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter. 85. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

63. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19 supplemental paid sick leave according to the highest of the following four methods: (1) the regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, (2) the

1 employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum wage, or
2 (4) the local minimum wage.

3 64. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sickleave
4 under either one of the following methods: (1) regular rate of pay or (2) the employee's total wages in a
5 90-day period divided by total hours worked.

6 65. Defendants failed to provide and pay Covid-19 supplemental paid sick leave in the
7 manner described above because Defendants failed to pay Plaintiff and the Class Members such sick
8 leave at one of the rates authorized by statute.

9 66. As a result, Defendants violated the Labor Code and are liable to Plaintiff and the Class
10 for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

11 **TENTH CAUSE OF ACTION**
12 **Failure to Indemnify Employees for Necessary Expenditures**
13 **[Cal. Lab. Code § 2802]**
(On Behalf of Plaintiff and the Class Against all Defendants)

14 67. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 66.

16 68. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all
17 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
18 his or her duties, or of his or her obedience to the directions of the employer.

19 69. During the Class period, and in violation of Cal. Lab. Code § 2802, Defendants
20 failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in
21 direct consequence of the discharge of their duties, including but not limited to, expenses relating to
22 their mandatory uniforms and uniform maintenance. Plaintiff and Class members were required to
23 use their personal cellular phones for work related purposes and purchase their own personal
24 protective equipment ("PPE's) and other safety equipment when mask were required to be worn
25 indoors during the COVID-19 pandemic, but Defendants did not reimburse them for these expenses.

26 70. As a proximate result of Defendants unlawful actions and omissions, Plaintiff and
27 Class members have been damaged in an amount according to proof at trial, and seek reimbursement
28 of all necessary expenditures, plus interest thereon pursuant to Cal. Lab. Code §2802(b).

1 Additionally, Plaintiff and Class members are entitled to all available statutory penalties and an
2 award of costs, expenses, and reasonable attorneys' fees, including those provided in Cal. Lab. Code
3 § 2802(c), as well as other available remedies.

4 **ELEVENTH CAUSE OF ACTION**
5 **Unfair and Unlawful Business Practices**
6 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**
7 ***(On Behalf of Plaintiff and the Class against all Defendants)***

8 71. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 70.

10 72. Each and every one of Defendants' acts and omissions in violation of the California
11 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to,
12 Defendants failure to provide required meal and rest breaks, unlawful rounding and requiring off-the-
13 clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages,
14 failure pay the accurate rate of pay, failure to provide supplemental COVID-19 sick pay, and failure
15 to furnish accurate itemized wage statements or to maintain required records, failure to comply with
16 Labor Code §2810.5, constitute an unfair and unlawful business practice under California Business
17 and Professions Code § 17200 *et seq.*

18 73. Defendants' violations of California wage and hour laws constitute a business practice
19 because the aforementioned acts and omissions were done repeatedly over a significant period of
20 time, and in a systematic manner, to the detriment of Plaintiff and Class members.

21 74. Defendants have avoided payment of wages, the provision of meal and rest breaks,
22 and other benefits as required by the California Labor Code, the California Code of Regulations, and
23 the applicable IWC Wage Orders. Further, Defendants have failed to record, report, and pay the
24 correct sums of assessment to the state authorities under the California Labor Code and other
25 applicable regulations.

26 75. As a result of these unfair and unlawful business practices, Defendants have reaped
27 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and
28 members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore
them to Plaintiff and Class members.

1 76. Defendants’ unfair and unlawful business practices entitle Plaintiff and Class members
2 to seek preliminary and permanent injunctive relief, including but not limited to orders that
3 Defendants account for, disgorge, and restore to Plaintiff and Class members the wages and other
4 compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution
5 of all monies to be disgorged from Defendants in an amount according to proof at the time of trial.

6 **TWELFTH CAUSE OF ACTION**
7 **Representative Action for Civil Penalties**
8 **[Cal. Lab. Code §§ 2698- 2699.5]**
9 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

10 77. Plaintiff incorporates herein by specific reference as though fully set forth the
11 allegations in paragraphs 1 through 76, with exception of the allegations in Paragraphs 20 through 22
12 (A-D).

13 78. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
14 2699(c), and is a proper representative to bring a civil action on behalf of himself, and other non-
15 exempt employees of Defendants who are California citizens, pursuant to the procedures specified in
16 California Labor Code § 2699.3, because Plaintiff was employed by Defendants and the alleged
17 violations of the California Labor Code were committed against Plaintiff.

18 79. A plaintiff has standing to represent all aggrieved employees for all of his asserted
19 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
20 (2018) 23 Cal.App.5th 745, 757.

21 80. Plaintiff seeks to recover civil penalties through a representative action permitted by
22 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
23 certification is not required.

24 81. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
25 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties
26 under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, 1199, and all
27 applicable IWC wage order penalties, from Defendants in a representative action for the violations set
28 forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226,
226.7, 246, 248, 248.1, 351, 510, 512, 1174, 1194, 1197, 1198 and 1774. Moreover, Defendants failed

1 to provide supplemental COVID-19 sick leave pursuant to Labor Code §§248.2 and 248.6, failure to
2 provide suitable resting facilities in violation of IWC Wage Order No. 5-2001, §13, and failure to
3 provide suitable seating in violation of IWC Wage Order No. 5-2001, §14. Plaintiff is also entitled to
4 an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

5 82. Pursuant to California Labor Code §§ 2699.3, on December 1, 2023, Plaintiff gave
6 written notice by certified mail to the California Labor and Workforce Development Agency
7 ("LWDA") and Defendants of the specific provisions of the California Labor Code and IWC Wage
8 Orders alleged to have been violated, including the facts and theories to support the alleged
9 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA
10 did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore,
11 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
12 commence a representative action under PAGA.

13 83. California Labor Code § 2699(f) provides that for all California Labor Code violations
14 for which a civil penalty is not specifically provided, the following civil penalties are established: one
15 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
16 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

17 84. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
18 for Defendants' violations of California Labor Code provisions for which a civil penalty is not
19 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204,
20 226.7, 246, 248.1, 248.2, 248.6, 1197, 1024.5, and for the violations of the applicable IWC Wage
21 Order alleged above.

22 85. All civil penalties sought and recovered under this action will be allocated as follows:
23 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
24 aggrieved employees.

25 86. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
26 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly situated,
3 respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and each of them,
4 as follows:

- 5 1. For compensatory damages in an amount to be ascertained at trial;
- 6 2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged
7 profits from the unfair and unlawful business practices of Defendants;
- 8 3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and
9 IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;
- 10 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 11 5. For preliminary and permanent injunctive relief enjoining Defendants from violating
12 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from engaging
13 in the unlawful business practices complained of herein;
- 14 6. For civil penalties under California Labor Code § 2699(f);
- 15 7. For waiting time penalties pursuant to California Labor Code § 203;
- 16 8. For statutory penalties according to proof, including but not limited to, all penalties
17 authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 354, 1174.5, 1775,
18 1197.1 and 2699;
- 19 9. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
20 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
- 21 10. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor
22 Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable
23 provision providing for pre-judgment interest;
- 24 11. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5,
25 226, 1194, 2802, 2699 and California Code of Civil Procedure § 1021.5, California Civil Code §
26 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing
27 for attorneys' fees and costs;
- 28 12. For declaratory relief;

1 13. For an order requiring and certifying the First through Eleventh Causes of Action as a
2 class action;

3 14. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
4 Class counsel; and

5 15. For such further relief that the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial
8 with respect to all issues triable of right by jury.

9 DATED: February 6, 2024

THE LAW OFFICE OF SCOTT E. WHEELER

10
11 By: 

12 SCOTT ERNEST WHEELER
13 JUSTIN A. WHEELER

14 *Attorney for Plaintiff and all others similarly situated*
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