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an individual, on behalf of himself and others similarly situated

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

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By: Brianna Johnson, DEPUTY

7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF SAN BERNARDINO**

9 JOSEPH SCHWARTZ, an individual, on behalf
10 of himself and others similarly situated,

11 Plaintiff,

12 vs.

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22 ENERGY INSPECTORS, LLC.; and, DOES 1
through 100, inclusive,

23 Defendants.
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CIVSB2403749

Case No.

Assigned for All Purposes to:

Hon.

Dept.

CLASS ACTION COMPLAINT

1. Failure to Pay All Wages Including Minimum and Overtime Wages §§ 204, 206, 226.2, 226.8, 510, 1182.12, 1194, 1194.2, 1197, 1720 et. seq.;
2. Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and Wage Order 5-2001, § 11;
3. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and Wage Order 5-2001, § 12;
4. Failure to Reimburse for Necessary Business Expenditures; Labor Code § 2802; and
5. Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code §§ 226, 226.3, and 1174;
6. Failure to Pay Waiting Time Penalties, Labor Code §§ 201-203
7. Unfair Business Practices in Violation of Cal. Bus. & Prof Code §§ 17200, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff JOSEPH SCHWARTZ (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, brings this class action complaint (“Complaint”) against Defendants ENERGY
3 INSPECTORS, LLC. and DOES 1 through 100, inclusive (collectively, “Defendants”), and alleges as
4 follows:

5 **INTRODUCTION**

6 1. This is a class action brought on behalf of Plaintiff and the class he seeks to represent
7 (“Class” or “Class Members”). The Class consists of all current and former non-exempt employees
8 employed by Defendants in the State of California during the Class Period. The term “Class Period” is
9 defined as four (4) years prior to the filing of this class action until class certification. Plaintiff reserves
10 the right to amend this complaint to reflect a different “Class Period” as further discovery is conducted.

11 2. Plaintiff, individually, and on behalf of Class, seeks relief against Defendants, for their
12 practices of violating the applicable Industrial Welfare Commission (“IWC”) Wage Orders, Code of
13 Regulations, and California Labor Code, including: (1) failure to pay all wages (including minimum,
14 regular, overtime, and double time compensation); (2) failure to provide meal periods or compensation
15 in lieu thereof; (3) failure to authorize or permit rest breaks or provide compensation in lieu thereof;
16 (4) failure to reimburse business expenses; (5) failure to provide accurate itemized wage statements;
17 and (6) failure to pay all wages due upon separation of employment. These violations concern current
18 and past non-exempt employees of Defendants.

19 3. At all relevant times herein, Defendants have consistently maintained and enforced
20 against Plaintiff and Class the unlawful practices and policies set forth herein.

21 4. Plaintiff seeks monetary relief against Defendants on behalf of himself and the putative
22 class to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys’
23 fees, costs, and penalties pursuant to Labor Code sections 201-204, 206, 208, 226, 226.7, 510, 512,
24 1182.12, 1194, 1194.2, 1197, and 1198, and California Code of Civil Procedure section 1021.5.

25 **JURISDICTION AND VENUE**

26 5. This is a class action pursuant to California Code of Civil Procedure section 382. The
27 monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal
28 jurisdictional limits of the Superior Court and will be established according to proof at trial.

6. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

7. This Court has jurisdiction over all Defendants because, upon information and belief, they have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court under Code of Civil Procedure sections 395(a) and 395.5 because, upon information and belief, Defendants reside, transact business, maintain offices, and/or have an agent or agents in this county, and the acts and omissions alleged herein took place in this county.

PARTIES

9. Plaintiff is a California citizen and resides in SAN BERNARDINO County, California. Defendants employed Plaintiff as a non-exempt hourly employee during the Class Period. Plaintiff's employment with Defendant ended within one year of the filing of this action. Plaintiff's job duties included all construction tasks and job responsibilities at Defendants' multiple worksites through SAN BERNARDINO County elsewhere throughout the state of California.

10. Defendant ENERGY INSPECTORS, LLC was and is a Nevada corporation doing business as Arcxis in San Bernardino County and elsewhere in California. ENERGY INSPECTORS, LLC provides home inspection services throughout the State of California. ENERGY INSPECTORS, LLC has and continues to employ non-exempt employees throughout the Class Period.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Defendant DOES 1 through 100, are sued under fictitious names pursuant to Code of Civil Procedure section 474 because Plaintiff does not know their true names or capacities. Plaintiff

1 will seek leave of court to amend this Complaint and serve such fictitiously named Defendants when
2 their names and capacities are ascertained.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are or
4 were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant
5 times.

6 14. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all
7 respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
8 plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to
9 the other Defendants.

10 15. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or
11 indirectly, through agents or other persons or entities, employed or otherwise exercised control over
12 the wages, hours, and working conditions of Plaintiff. Furthermore, each Defendant in all respects acted
13 as the employer and/or joint employer of Plaintiff and the Class Members.

14 16. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
15 omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through
16 100, acting as the agent, alter ego, agent, servant, joint venturer, co-conspirator, and/or partner for the
17 other, within a common enterprise and legal authority to act on the other's behalf. The acts of any and
18 all Defendants were in accordance with, and represent, the official policy of Defendants.

19 17. At all relevant times, Defendants, and each of them, acted within the scope of such
20 agency or employment, or ratified each and every act or omission complained of herein. At all relevant
21 times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other
22 Defendants in proximately causing the damages herein alleged.

23 18. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
24 in some manner intentionally, negligently, and/or otherwise responsible for the acts, omissions,
25 occurrences, and transactions alleged herein.

26 **CLASS ALLEGATIONS**

27 19. Plaintiff brings this class action pursuant to Code of Civil Procedure section 382 on
28 behalf of himself and all others similarly situated who were injured by Defendants' violations of the

1 Labor Code, Business and Professions Code sections 17200, *et seq.*, and IWC Wage Orders during the
2 Class Period.

3 20. Plaintiff's proposed Class consists of and is defined as follows:

4 Class

5 All current and former non-exempt employees employed by Defendants in the State of
6 California within four years prior to the filing of this action to the date of class
7 certification.

8 21. Plaintiff also seeks to certify the following Subclass:

9 Waiting Time Subclass

10 All Class Members who separated from their employment with Defendants at any time
11 within three years prior to the filing of this action to the date of class certification
12 ("Subclass" or "Waiting Time Subclass").

13 22. Members of the Class and Subclass described above will be collectively referred to as
14 "Class Members."

15 23. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish
16 additional subclasses, or modify or re-define any class or subclass definition as appropriate based on
17 investigation, discovery, and specific theories of liability.

18 24. There is a well-defined community of interest in this litigation and the proposed Class
19 and Subclass are readily ascertainable.

20 25. **Commonality:** This action has been brought and may properly be maintained as a class
21 action under the California Code of Civil Procedure section 382 because there are common questions
22 of law and fact as to the Class Members that predominate over any questions affecting only individual
23 members including, but not limited to, the following:

24 (a) Whether Defendants paid Plaintiff and Class Members all wages (including
25 minimum, regular, overtime, and double time wages) for all hours worked,
26 including the correct legal minimum wage, overtime, and double overtime rate;

27 (b) Whether Defendants paid Plaintiff and Class Members all wages (including
28 minimum, regular, overtime, and double time wages) for all hours worked,

1 including the correct prevailing wage for public works projects pursuant to
2 Labor Code sections 1720 *et. seq.*;

3 (c) Whether Defendants' rounding policy and practice favored Defendants by
4 systematically undercompensating Plaintiff and Class Members;

5 (d) Whether Defendants compensated Plaintiff and Class Members for drive time,
6 non-productive time or travel time;

7 (e) Whether Defendants required Plaintiff and Class Members to work off-the-
8 clock without compensation;

9 (f) Whether Defendants required Plaintiff and Class Members to incur business
10 expenses without reimbursement;

11 (g) Whether Defendants provided Plaintiff and Class Members with compliant
12 meal periods or paid compensation in lieu thereof;

13 (h) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff
14 and Class Members or paid compensation in lieu thereof;

15 (i) Whether Defendants paid Plaintiff and Class Members for rest periods or paid
16 compensation in lieu thereof;

17 (j) Whether Defendants failed to provide Plaintiff and Class Members with
18 accurate itemized wage statements;

19 (k) Whether Defendants failed to timely pay the Plaintiff and Class Members all
20 wages due immediately upon termination or within 72 hours of resignation;

21 (l) Whether Defendants' conduct was willful or reckless; and

22 (m) Whether Defendants engaged in unfair business practices in violation of
23 Business and Professions Code sections 17200, *et seq.*

24 26. There is a well-defined community of interest. Further, Plaintiff and Class Members
25 have suffered common injuries as a result of Defendants' systemic employment policies and practices.
26 Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness of
27 those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff
28 and Class Members accordingly. In addition, answers to common questions raised in this Complaint

1 will advance resolution of each individual Class Member's claims.

2 27. **Numerosity:** The Class Members are so numerous that joinder of all members is
3 impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this
4 time, on information and belief, the class is estimated to be greater than 500 individuals.

5 28. **Ascertainability:** The identities of the Class Members are readily ascertainable by
6 inspection of Defendants' employment and payroll records.

7 29. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the
8 Class Members because Defendants' failure to comply with the provisions of California's wage and
9 hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained
10 by Plaintiff are also typical of the injuries sustained by Class Members because they arise out of and
11 are caused by Defendants' common course of conduct as alleged herein.

12 30. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of all
13 Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain
14 full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys, as
15 proposed class counsel, are competent and experienced in litigating large employment class actions and
16 versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred
17 and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have
18 been and will be necessarily expended for the prosecution of this action for the substantial benefit of
19 the Class Members.

20 31. **Superiority:** The nature of this action makes use of class action adjudication superior
21 to other methods. A class action will achieve economies of time, effort, and expense as compared with
22 separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in
23 the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and
24 is empowered to, fashion methods to efficiently manage this case as a class action.

25 32. **Public Policy Considerations:** Employers in the State of California violate
26 employment and labor laws every day. Current employees are often afraid to assert their rights out of
27 fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they
28 believe their former employers might damage their future endeavors through negative references and/or

1 other means. Class actions provide class members who are not named in the complaint with a type of
2 anonymity that allows for the vindication of their rights while affording them privacy protections.

3 GENERAL ALLEGATIONS

4 33. **Background:** At all relevant times mentioned herein, Defendants employed Plaintiff
5 and other persons as non-exempt employees at Defendants' locations within California. Defendants
6 employed Plaintiff in a non-exempt position during his employment and continue to employ non-
7 exempt employees within California.

8 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were
10 knowledgeable about California's wage and hour laws, employment and personnel practices, and the
11 requirements of California law.

12 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
13 have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the
14 financial ability to pay such compensation but willfully, knowingly, and intentionally failed to do so
15 all in order to increase Defendants' profits.

16 36. **Unpaid Wages:** Plaintiff is informed and believes, and thereon alleges, that Defendants
17 knew or should have known that Plaintiff and Class Members were entitled to receive at least minimum,
18 regular, overtime, and double times wages and that they were not receiving minimum, regular,
19 overtime, and double time wages for all work that was required to be performed.

20 37. During the Class Period, Plaintiff and Class Members regularly worked in excess of
21 eight (8) hours in a workday and/or 40 hours in a workweek, and double time for all hours worked in
22 excess of 12 hours in a workday. In violation of the Labor Code and IWC Wage Orders, Defendants
23 either with an application and/or software rounded, edited, and/or input the incorrect times for
24 Plaintiff's and Class Members' start times to reflect the scheduled start time instead of the actual start
25 time which should have included time spent arriving early to work at the yard, and performing other
26 preliminary duties and postliminary duties, and otherwise preparing for the workday.

27 38. Defendants also rounded Plaintiff's and Class Members' end time to reflect the
28 scheduled end time despite working past those hours. As such, Plaintiff and Class Members performed

1 work off-the-clock without compensation. In addition, Defendants failed to pay Plaintiff and Class
2 Members the legal rate for travel time in which they were under the control and performed work for
3 Defendant. Defendant purports to pay a wage rate and reimbursement for “commute time” which is
4 nevertheless unlawful.

5 39. **Meal Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
6 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
7 timely, off-duty, uninterrupted 30-minute meal period for every five hours of work, or payment of one
8 additional hour of pay at their regular rate of pay when they did not receive a compliant meal period.
9 During the Class Period, Plaintiff and Class Members regularly worked in excess of five (5) and/or 10
10 hours per workday.

11 40. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members
12 did not receive compliant meal periods. Specifically, Defendants provided a single one-hour hour break
13 that aggregated two 15-minute rest periods and as many as two 30-minute meal periods. Furthermore,
14 Defendant automatically deducted one hour from Plaintiff and Class Members’ time cards knowing
15 they were performing work for Defendant.

16 41. As such, Defendants failed to provide all required meal period, including second meal
17 periods when Plaintiff and Class Members worked in excess of 10 hours per workday. Even though
18 Plaintiff and other Class Members were prevented from taking compliant meal periods, Defendants
19 failed to compensate them at the correct and applicable premium pay rate for every non-compliant meal
20 period. Defendant is subject to multiple prevailing wage ordinances and as such has failed to pay
21 premium wages in accordance with California law.

22 42. **Rest Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
23 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
24 ten-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction
25 thereof, or payment of one (1) additional hour of pay at their regular rate of pay when they were not
26 permitted to take a compliant rest period. During the Class Period, Plaintiff and Class Members
27 regularly worked in excess of four (4) hours or major fraction thereof. Plaintiff and Class Members
28 worked in excess of 10 hours daily and as much as 12 hours but were not permitted or provided a third

meal period. Plaintiff and Class Members' rest periods were in practice working rest periods.

43. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not permitted to take compliant rest breaks, due to Defendants' unlawful policy and practice of aggregating two (2) 15-minute rest breaks and a one (1) hour meal period into a single break. Consequently, Plaintiff and Class Members were not authorized or permitted to take rest breaks, including first, second, and third rest breaks. Defendants failed to pay Plaintiff and Class Members one additional hour of pay at their regular rate of pay when they did not receive a compliant rest break. Furthermore, Defendant is subject to multiple prevailing wage ordinances and as such has failed to pay premium wages in accordance with California law.

44. **Waiting Time Penalties:** Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Waiting Time Subclass Members who separated from their employment with Defendants during the statutory period were entitled to timely payment of all wages due. In violation of the Labor Code, Plaintiff and Waiting Time Class Members did not receive payment of all wages owed upon separation within the permissible time period due to, *inter alia*, Defendants' failure to pay all wages and meal and rest period premiums to Plaintiff and Class Members.

45. **Wage Statement Violations:** Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not furnished with complete and accurate wage statements that show all of the information required by Labor Code section 226, including, but not limited to, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

46. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

47. At all times herein relevant, Defendants had a duty to comply with Labor Code sections

1 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, 1720 *et. seq.*, the applicable IWC Wage Orders, and
2 all applicable local minimum wage ordinances in effect throughout California.

3 48. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
4 owed on regularly scheduled paydays at least twice during each calendar month, on days designated in
5 advance by the employer as the regular paydays. All wages earned in excess of the normal work period
6 must be paid no later than the payday for the next regular payroll period.

7 49. Labor Code section 206 provides that in case of a dispute over wages, the employer
8 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
9 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

10 50. The IWC Wage Orders define “hours worked” as “the time during which an employee
11 is subject to the control of an employer and includes all time the employee is suffered or permitted to
12 work, whether or not required to do so.”

13 51. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
14 all wages due, including minimum, regular, overtime, and double time wages due to Defendants’
15 unlawful rounding practice, failure to provide compensation for off-the-clock work, and failure to
16 compensate drive time, among other things. Defendant failed to pay all applicable prevailing wage
17 rates to Plaintiff and Class Members for hours worked on public works projects. Similarly, Defendant
18 failed to pay premium wages, travel time wages, sick pay, vacation wages and other legal wage rates
19 at the applicable prevailing wage rate.

20 52. Labor Code section 510 and the IWC Wage Orders require that employers pay
21 employees for all overtime hours at a rate of one and one-half times the employee’s regular rate of pay
22 for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after the first
23 eight hours on the seventh consecutive workday in one work week. Labor Code section 510 and the
24 IWC Wage Orders further require that employers pay employees double their regular rate of pay for
25 hours work in excess of 12 hours in a workday and after eight hours on the seventh consecutive workday
26 in one workweek. Labor Code section 510 requires payment of overtime wages at one- and one-half
27 times the “regular rate of pay,” which includes all forms of remuneration earned by the employee
28 including piece-rates.

1 53. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
2 all employees in California for all hours worked. Local minimum wage ordinances may provide for
3 higher minimum wage rates that must be paid to employees for all hours worked in those locales where
4 each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than
5 the state or local minimum wage, whichever is higher, for any hour of work.

6 54. Labor Code section 1194 requires that employers pay employees at least the legal
7 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
8 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage
9 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
10 along with interest thereon, reasonable attorneys' fees and costs of suit.

11 55. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
12 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

13 56. Labor Code section 1198 prohibits employers from employing for longer hours or less
14 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
15 the Labor Commissioner.

16 57. In violation of California law, Defendants have knowingly and willfully refused to
17 perform their obligations and compensate Plaintiff and Class Members for all wages earned as alleged
18 above.

19 58. Defendants' failure to pay Plaintiff and Class Members all earned minimum and regular
20 wages in accordance with Labor Code sections 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, the
21 applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout
22 California, Plaintiff and Class Members are entitled to recover the full amount of unpaid wages,
23 liquidated damages, prejudgment interest, and statutory penalties, along with attorneys' fees and costs
24 in amounts that will be established at trial.

25 **SECOND CAUSE OF ACTION**

26 **MEAL PERIOD VIOLATIONS**

27 59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
28 fully set forth herein.

1 60. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7
2 and 512, and the applicable IWC Wage Orders.

3 61. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
4 employing any person for a work period of more than 5 hours per day without providing the employee
5 with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work),
6 except that if the total work period per day is no more than 6 hours, the meal period may be waived by
7 mutual consent of the employer and employee. A second meal period of not less than 30 minutes is
8 required if an employee works more than 10 hours per day and must begin before the employee's tenth
9 hour of work, except if the total hours worked is no more than 12 hours, the second meal period may
10 be waived by mutual consent of the employer and employee, but only if the first meal period was not
11 waived. An employer must relieve an employee of all duties during meal periods.

12 62. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all
13 duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and
14 counted as time worked." DEFENDANTS maintained a policy and practice wherein employees were
15 regularly required to work through meal periods or were not relieved of all duties and as such under the
16 control of Defendant.

17 63. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
18 requiring any employee to work during a meal period mandated by any California statute, regulation,
19 standard or order. If an employer fails to provide an employee with a meal period in accordance with
20 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
21 employee one additional hour of pay at the employee's regular rate of compensation for each workday
22 that the meal period is noncompliant.

23 64. During the Class Period, Plaintiff and Class Members did not receive compliant meal
24 periods when working more than five (5) and/or 10 hours per day because Defendants provided only
25 one (1) break per workday. As such, Defendants failed to provide Plaintiff and Class Members with all
26 required meal periods, including second meal periods. Defendant grouped breaks and automatically
27 deducted one hour for every day worked by Plaintiff and Class Members when in fact rest periods and
28 as many as two meal periods were not permitted or provided.

65. During the relevant time period, Defendants failed to pay Plaintiff and Class Members meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the applicable IWC Wage Order.

66. As a result of Defendants' failure to provide compliant meal periods and pay meal period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

67. Because Plaintiff and Class Members were and/or are entitled to such meal periods or “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according to proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

68. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys' fees and costs from Defendants in an amount subject to proof and approved by the Court.

THIRD CAUSE OF ACTION

REST PERIOD VIOLATIONS

69. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

70. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7 and the applicable IWC Wage Orders.

71. The IWC Wage Orders require employers to authorize and permit all employees to take 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

72. If an employer fails to provide an employee with a rest period in accordance with California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is noncompliant.

73. During the relevant time period, Defendants did not implement a compliant rest break policy or practice by providing only one (1) break per workday. As such, Defendants failed to provide Plaintiff and Class Members with all required rest periods, including second and third rest periods.

1 74. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
2 rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
3 applicable IWC Wage Order.

4 75. As a result of Defendants' failure to provide compliant rest periods and pay rest period
5 premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code
6 sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages
7 and compensation.

8 76. Because Plaintiff and Class Members were and/or are entitled to such rest periods or
9 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
10 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
11 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

12 77. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys'
13 fees and costs from Defendants in an amount subject to proof and approved by the Court.

14
15 **FOURTH CAUSE OF ACTION**
16 **(FAILURE TO REIMBURSE FOR BUSINESS EXPENSES)**

17 78. Plaintiff incorporates all previous paragraphs of this Complaint as though fully set forth
18 herein.

19 79. Pursuant to Labor Code §2802, Defendants are required to reimburse Plaintiff for
20 business expenses incurred in the direct consequences of his discharge of his duties for Defendants,
21 including expenses associated with the purchase of equipment such as use of personal cell phones,
22 mileage, and tools and equipment not provided by Defendant. On information and belief, Defendant
23 also violated California's uniform laws.

24 80. Within the four years before the filing of this Complaint and continuing until the
25 present time, Plaintiff has been required to incur expenses as a condition of and in the discharge of his
26 employment duties and has thereby incurred expenses for these items.

27 81. Defendant has failed to reimburse Plaintiff for said expenses.

28 **FIFTH CAUSE OF ACTION**

1 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

2 82. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
3 fully set forth herein.

4 83. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

5 84. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
6 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
7 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
8 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net wages
9 earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
10 identification number of the employee, (8) the name and address of the legal entity that is the employer,
11 and (9) all applicable hourly rates in effect and the corresponding number of hours worked at each
12 hourly rate.

13 85. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
14 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
15 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
16 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
17 an award of costs and attorneys' fees.

18 86. During the relevant time period, Defendants have knowingly and intentionally failed
19 to comply with Labor Code section 226(a) on wage statements that were provided to Plaintiff and Class
20 Members. The deficiencies include, among other things, Defendants' failure to correctly state the gross
21 and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period,
22 and the corresponding number of hours worked at each hourly rate.

23 87. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
24 and Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
25 Plaintiff and Class Members have been injured by Defendants' intentional violation of California Labor
26 Code section 226(a) because they were denied both their legal right to receive, and their protected
27 interest in receiving, accurate itemized wage statements under California Labor Code section 226(a).
28 Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of wages,

1 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
2 these efforts and incur these costs had Defendants provided the accurate wages earned. This has also
3 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

4 88. Defendants' violations of California Labor Code section 226(a) prevented Plaintiff and
5 Class Members from knowing, understanding, and disputing the wages paid to them, and resulted in an
6 unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional
7 failure to comply with California Labor Code section 226(a), Plaintiff and Class Members have suffered
8 an injury, and the exact amount of damages and/or penalties is all in an amount to be shown according
9 to proof at trial.

10 89. Plaintiff and Class Members are also entitled to injunctive relief under California Labor
11 Code section 226(h), compelling Defendants to comply with California Labor Code section 226, and
12 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

13 **SIXTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 90. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
16 fully set forth herein.

17 91. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
18 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to
19 Plaintiff and Waiting Time Subclass Members.

20 92. Labor Code section 201 requires that if an employer discharges an employee, the wages
21 earned and unpaid at the time of discharge are due and payable immediately.

22 93. Labor Code section 202 requires that if "an employee not having a written contract for
23 a definite period" quits, the employee's wages shall become due and payable no later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
25 which case the employee is entitled to his or her wages at the time of quitting.

26 94. Labor Code section 203 provides that if an employer willfully fails to pay, without
27 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
28 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an

1 action therefor is commenced, but that the wages shall not continue for more than 30 days per
2 employee.

3 95. During the relevant time period, Defendants willfully failed to pay Waiting Time
4 Subclass Members all their earned wages upon termination including, but not limited to, minimum,
5 regular, overtime, and double time compensation, and premium compensation either at the time of
6 discharge or within 72 hours of leaving Defendants' employ.

7 96. As a result of Defendants' failure to timely pay all wages owed to Plaintiff and Waiting
8 Time Subclass Members in accordance with Labor Code sections 201, 202 and 203, Plaintiff and
9 Waiting Time Subclass Members are entitled to recover waiting time penalties, prejudgment interest,
10 attorneys' fees, and costs in amounts that will be established at trial.

11 **SEVENTH CAUSE OF ACTION**

12 **UNFAIR BUSINESS PRACTICES**

13 97. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
14 fully set forth herein.

15 98. Plaintiff brings this claim individually and on behalf of Class Members.

16 99. Business & Professions Code section 17200 ("UCL") prohibits unfair competition in
17 the form of any unlawful, unfair, or fraudulent business act or practice.

18 100. Business and Professions Code section 17204 allows "any person who has suffered
19 injury in fact and has lost money or property as a result of such unfair competition" to prosecute a civil
20 action for violation of the UCL.

21 101. Labor Code section 90.5, subdivision (a) states it is the public policy of California to
22 vigorously enforce minimum labor standards in order to ensure employees are not required to work
23 under substandard and unlawful conditions, and to protect employers who comply with the law from
24 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
25 with minimum labor standards.

26 102. Beginning at an exact date unknown to Plaintiff, but at least since the date four years
27 prior to the filing of this complaint, Defendants have committed acts of unfair competition as defined
28 by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business

1 practices and acts described in this complaint, including, but not limited to, violations of Labor Code
2 sections 201-204, 206, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198, and 1720 *et. seq.* as
3 well as other statutes.

4 103. The violations of these laws and regulations, as well as of fundamental California
5 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
6 Business and Professions Code sections 17200 *et seq.*

7 104. As a result of these actions, Plaintiff, on information and belief, alleges that Defendants
8 are able to unfairly compete with other comparable companies in the State of California in violation of
9 Business & Professions Code sections 17000 *et. seq.* and sections 17200 *et. seq.* Due to these unlawful,
10 unfair, and/or fraudulent business practices, Defendants have gained a competitive advantage over
11 other comparable companies doing business in the State of California.

12 105. The victims of these unlawful, unfair, and/or fraudulent business practices include, but
13 are not limited to, Plaintiff, putative class members, competing cannabis manufacturers in the State of
14 California, and the general public. Plaintiff is informed and believes, and thereon alleges, that
15 Defendants performed the above-mentioned acts with the intent of gaining an unfair competitive
16 advantage and thereby injuring Plaintiff, putative class members, other competitors, and the general
17 public.

18 106. Plaintiff's success in this action will enforce important rights affecting the public
19 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf of
20 himself.

21 107. Business and Professions Code sections 17203 provides that a court may make such
22 orders or judgments as may be necessary to prevent the use or employment by any person of any
23 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
24 Defendants from repeating their unlawful, unfair, and fraudulent business acts and business practices
25 alleged above.

26 108. Business and Professions Code section 17203 provides that the Court may restore to
27 any person in interest, any money or property that may have been acquired by means of such unfair
28 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions

1 Code section 17203 for wages and payments unlawfully withheld from employees, including the fair
2 value of the meal and rest periods and other losses alleged herein, during the four-year period prior to
3 the filing of this complaint. All remedies are cumulative pursuant to Business & Professions Code
4 section 17205.

5 109. Business and Professions Code section 17202 provides: “Notwithstanding section 3369
6 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or
7 penal law in a case of unfair competition.” Plaintiff and Class are entitled to enforce all applicable
8 penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

9 110. Plaintiff requests injunctive relief pursuant to Business & Professions Code section
10 17203 to enjoin Defendants from continuing the unfair/unlawful business practices alleged herein.

11 111. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is a
12 financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and
13 it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to pay attorneys’ fees
14 from the recovery in this action. Attorneys’ fees are appropriate pursuant to Code of Civil Procedure
15 section 1021.5 and others.

16 **PRAYER FOR RELIEF**

17 Plaintiff, individually and on behalf of all others similarly situated, prays for relief and judgment
18 against Defendants, jointly and severally, as follows:

- 19 a. For certification of this action as a class action, including certifying the Class and
20 Subclass alleged by Plaintiff.
- 21 b. For appointment of Plaintiff, JOSEPH SCHWARTZ , as the class representative;
- 22 c. For appointment of Jose Garay, APLC as class counsel for all purposes;
- 23 d. For compensatory damages in an amount according to proof with interest thereon;
- 24 e. For economic and/or special damages in an amount according to proof with interest
25 thereon;
- 26 f. For damages, monetary relief, wages, premiums, benefits, and penalties, including
27 interest thereon;
- 28 g. For expense reimbursements pursuant to Labor Code section 208;

- 1 h. For waiting time penalties pursuant to Labor Code section 203;
- 2 i. For liquidated damages pursuant to Labor Code section 1194.2;
- 3 j. For statutory penalties to the extent permitted by law, including those pursuant to the
- 4 Labor Code and IWC Wage Orders;
- 5 k. For restitution to Plaintiff and Class Members of all money and property unlawfully
- 6 acquired by Defendants through unfair or unlawful business practices pursuant to
- 7 Business and Professions Code sections 17200 *et seq.*;
- 8 l. For an order requiring Defendants to restore and disgorge all funds to each employee
- 9 acquired by means of any act or practice declared by this Court to be unlawful, unfair,
- 10 or fraudulent and, therefore, constituting unfair competition under Business and
- 11 Professions Code sections 17200, *et seq.*;
- 12 m. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6
- 13 and Civil Code sections 3287 and 3289;
- 14 n. For post judgment interest on all amounts awarded to Plaintiff and Class Members as
- 15 provided by law;
- 16 o. For recovery of attorneys' fees and costs provided by Labor Code sections 226, 1194,
- 17 and Code of Civil Procedure section 1021.5; and
- 18 p. For such other relief as the Court deems just and proper.
- 19
- 20

21 Dated: January 18, 2024

JOSE GARAY, APLC

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23 By: _____

Jose R. Garay

24 Attorneys for Plaintiff JOSEPH SCHWARTZ

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27 **DEMAND FOR JURY TRIAL**

28 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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Dated: January 18, 2024

JOSE GARAY, APLC



By: _____

Jose R. Garay

Attorneys for Plaintiff JOSEPH SCHWARTZ