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on behalf of himself and others similarly situated

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

DUSTIN DEBRUYN, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

EVERGREEN, an entity of unknown form;
EVERGREEN RECYCLING, LLC, a
Delaware limited liability company; and DOES
1 through 50, inclusive,

Defendants.

Case No. CVRI2401103

CLASS ACTION

Assigned for All Purposes To:
Hon. Harold W. Hopp
Dept.: 1

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code § 245 *et seq.* and 246;
7. Reimbursement of Necessary Expenditures Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5;
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties Pursuant to Labor Code § 2699, *et seq.*

DEMAND FOR JURY TRIAL

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

4 INTRODUCTION

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

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

24 3. Defendants required Plaintiff and the Employees in the Class to perform work
25 while remaining under Defendants’ control before and after being on the clock for their daily work
26 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and
27 provided them with inaccurate wage statements that prevented Plaintiff and the Class from
28 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class

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

3 **THE PARTIES**

4 **A. The Plaintiff**

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

8 **B. The Defendants**

9 5. Defendant EVERGREEN is an entity of unknown form with its principle executive
10 offices in Fairview Park, Ohio and has been listed as the employer on Plaintiff's paystubs during
11 the relevant time period. EVERGREEN does not list a California address with the California
12 Secretary of State, but upon information and belief, employs Plaintiff and the Class members at
13 Defendants' offices and facilities in Riverside, California, and throughout California and conducts
14 business throughout California.

15 6. Defendant EVERGREEN RECYCLING, LLC is a Delaware corporation with its
16 principle executive office in Houston, Texas, and has been identified as the employer listed on
17 Plaintiff's personnel file during the relevant time period. EVERGREEN RECYLCING, LLC lists
18 a Texas address in Houston, Texas with the California Secretary of State, and employs Class
19 members in Riverside County, including at Defendants' offices and facilities in Riverside,
20 California, and throughout California and conducts business throughout California.

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

1 discussions with supervisors post-shift. Plaintiff also contends that Defendants failed to pay
2 Plaintiff and the Class members all wages due and owing, failed to provide meal and rest breaks,
3 and failed to furnish accurate wage statements, all in violation of various provisions of the
4 California Labor Code and applicable Wage Orders. Additionally, Defendants paid Plaintiff and
5 Employees nondiscretionary commissions, incentive pay, shift differentials, and/or
6 nondiscretionary bonuses. However, upon information and belief, Defendants failed to incorporate
7 all remunerations, including nondiscretionary commissions, incentive pay, shift differentials,
8 and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
9 calculating the overtime wage rate. Therefore, during times when Plaintiff and Employees worked
10 overtime and received nondiscretionary commissions, incentive pay, shift differentials, and/or
11 nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower overtime
12 rate than required.

13 11. From at least four (4) years prior to the filing of this lawsuit and continuing to the
14 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
15 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
16 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
17 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
18 regular rate of pay for purposes of calculating sick pay. Therefore, during times when Plaintiff and
19 Employees worked overtime and received nondiscretionary commissions, incentive pay, shift
20 differentials, and/or nondiscretionary bonuses, Defendants failed to pay all sick pay by paying a
21 lower overtime rate than required.

22 12. From at least four (4) years prior to the filing of this lawsuit and continuing to the
23 present, Defendants paid Plaintiff and Employees nondiscretionary commissions, incentive pay,
24 shift differentials, and/or nondiscretionary bonuses. However, upon information and belief,
25 Defendants failed to incorporate all remunerations, including nondiscretionary commissions,
26 incentive pay, shift differentials, and/or nondiscretionary bonuses, into the calculation of the
27 regular rate of pay for purposes of calculating vacation pay. Therefore, during times when Plaintiff
28 and Employees worked overtime and received nondiscretionary commissions, incentive pay, shift

1 differentials, and/or nondiscretionary bonuses, Defendants failed to pay all vacation pay by paying
2 a lower overtime rate than required. In addition, Defendants failed to pay Plaintiff all his accrued
3 vacation time when his employment with Defendants was terminated.

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

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

18 15. As a result of the above described the daily work demands and pressures to work
19 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
20 Class members were not properly paid for all wages earned and for all wages owed to them by
21 Defendants, including when working more than eight (8) hours in any given day and/or more than
22 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
23 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
24 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
25 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
26 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
27 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
28 Labor Code, applicable IWC Wage Orders.

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

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

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

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

24 20. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
25 continuing to the present, Defendants have consistently failed to provide Employees with timely,
26 accurate, and itemized wage statements as required by California wage-and-hour laws.
27 Specifically, Defendants failed in their affirmative obligation to keep accurate records of the
28 correct overtime wages based on proper regular rate calculations that included nondiscretionary

1 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the
2 total amount of compensation of their Employees. Moreover, the wage statements given to
3 Employees by Defendants failed to accurately account for wages, overtime, and premium pay for
4 deficient meal periods and rest breaks all of which Defendants knew or reasonably should have
5 known were owed to Employees, as alleged hereinabove. The wage statements provided to
6 Employees were confusing and required Employees to engage in discovery and refer to outside
7 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
8 Employees.

9 21. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
10 continuing to the present, Defendants have consistently failed to provide Employees with timely,
11 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

12 22. From at least four (4) years prior to the filing of this lawsuit and continuing to the
13 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
14 performance of their job duties for Defendants including, but not limited to, the cost of personal
15 cell phone usage which was necessary to perform their duties under Defendants' employ in
16 violation of Labor Code § 2802.

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

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

24 25. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor
25 Code §§ §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558,
26 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and
27 2802.

28 26. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,

1 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
2 enjoyed from their violations of Labor Code.

3 **CLASS ALLEGATIONS**

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

8 28. Further, plaintiff seeks to represent the following Subclasses composed of and
9 defined as follows:

10 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
11 compensated for all hours worked for Defendants at the applicable minimum wage.

12 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
13 compensated for all hours worked for Defendants at the required rates of pay, including for all
14 hours worked in excess of eight in a day and/or forty in a week.

15 c. Subclass 3. Vacation Wages Subclass. All Class members who were not
16 compensated at the Employee's regular rate of pay for their vacation wages and/or who were not
17 paid all accrued vacation time at the end of their employment with Defendants.

18 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at
19 the Employee's regular rate of pay for their sick pay wages.

20 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
21 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
22 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

23 f. Subclass 6. Rest Break Subclass. All Class members who were subject to
24 Defendants' policy and/or practice of failing to authorize and permit Employees to take
25 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
26 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

27 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
28 Defendants' policy and/or practice of failing to keep accurate time and wage records as required

1 by California wage-and-hour laws.

2 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
3 applicable limitations period, were not provided with accurate itemized wage statements.

4 i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class
5 members who were subject to Defendants failing to reimburse for expenses necessarily incurred in
6 the performance of Employees job duties for Defendants which were necessary to perform their
7 duties under Defendants' employ.

8 j. Subclass 11. Termination Pay Subclass. All Class members who, within the
9 applicable limitations period, either voluntarily or involuntarily separated from their employment
10 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
11 termination.

12 k. Subclass 12. UCL Subclass. All Class members who are owed restitution as a
13 result of Defendants' business acts and practices, to the extent such acts and practices are found to
14 be unlawful, deceptive, and/or unfair.

15 29. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
16 modify the class description with greater particularity or further division into subclasses or
17 limitation to particular issues.

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

21 **A. Numerosity**

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

27 32. Accounting for employee turnover during the relevant time period increases this
28 number substantially. Plaintiff alleges that Defendants' employment records will provide

information as to the number and location of all class members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants failed to pay Employees vacation wages as required under Labor Code § 227.3;
- e. Whether Defendants failed to pay Employees sick pay as required under Labor Code § 245;
- f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- h. Whether Defendants violated Labor Code § 226(a);
- i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- j. Whether Defendants failed to reimburse Employees for necessary business expenses;
- k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- l. Whether Defendants are liable for penalties under Labor Code § 2699, et seq;
- m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- n. Whether Employees are entitled to equitable relief pursuant to Business and

Professions Code § 17200 *et seq.*

C. Typicality

34. The claims of the named plaintiff are typical of those of the other Employees. Employees all sustained injuries and damages arising out of and caused by Defendant's common course of conducts in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.

D. Adequacy of Representation

35. Plaintiff will fairly and adequately represent and protect the interest of Employees. Counsel who represents Employees are experienced and competent in litigating employment class actions.

E. Superiority of Class Action

36. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Employees is not practicable, and questions of law and fact common to all Employees predominate over any questions affecting only individual Employees. Each Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

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

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

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

39. Defendants failed to pay Employees minimum wages for all hours worked. Defendants had a consistent policy of misstating Employees time records and failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with working during meal breaks, worked "pre-shift" and "post-

1 shift” without compensation by badging into the building and waiting in line for five to seven
2 minutes to clock-in; donning protective gear, including a hardhat, safety glasses, and ear plugs
3 before badging into the building pre-shift; doffing protective gear after clocking out; and having
4 work-related discussions with supervisors post-shift. Additionally, Defendants had a consistent
5 policy of failing to pay Employees for hours worked during alleged meal periods for which
6 Employees were denied, as also addressed herein. Moreover, Defendants did not pay Plaintiff
7 and Employees at the applicable minimum wage for all hours worked. Defendants’ uniform
8 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the
9 Class as a whole, as a result of implementing a uniform policy and practice that denied accurate
10 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

11 40. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
12 states:

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

15 41. The applicable minimum wages fixed by the commission for work during the
16 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
17 therefore entitled to double the minimum wage during the relevant period.

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

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

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

25 44. California Labor Code § 1194.2 also provides for the following remedies:
26 In any action under Section 1194 . . . to recover wages because of
27 the payment of a wage less than the minimum wages fixed by an
28 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

1 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon
2 information and belief, Defendants failed to incorporate all remunerations, including
3 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
4 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime
5 wage rate.

6 50. Therefore, during times when Plaintiff and Employees worked overtime and
7 received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
8 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than
9 required.

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

16 52. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

18 53. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
19 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
20 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
21 reasonable attorneys' fees and costs.

22 **THIRD CAUSE OF ACTION**

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

24 **(Against All Defendants)**

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

27 55. Employees regularly worked shifts greater than five (5) hours and greater than ten
28 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of

1 more than five (5) hours without providing him or her with a meal period of not less than thirty
2 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
3 meal period of not less than thirty (30) minutes.

4 56. Defendants failed to provide Employees with meal periods as required under the
5 Labor Code. Employees were required to work through their meal periods which they were
6 denied. Employees were also consistently required to take meal periods after working well beyond
7 the five (5) hour shifts. Furthermore, Employees were regularly required to work for more than 10
8 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal period as
9 required by law.

10 57. Moreover, Defendants failed to compensate Employees for each meal period not
11 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
12 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
13 employee a meal period in accordance with this section, the employer shall pay the employee one
14 hour of pay at the employee's regular rate of compensation for each workday that the meal period
15 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
16 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
17 and 20 of the applicable IWC Wage Order. Specifically, Defendants had a policy and practice
18 whereby Plaintiff and Employees had to clock out for meal periods prior to the fifth hour of work
19 but were required by Defendants to continue working while off the clock and take late meal
20 periods, in order for Defendant to avoid paying meal period premiums. Additionally, as detailed
21 above, when Defendants did pay meal period premiums, they did so at the normal regular rate of
22 pay without factoring in all forms of remuneration/compensation or by otherwise incorrectly
23 calculating the regular rate.

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

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

9 61. Defendants failed to provide Employees with timely and uninterrupted rest breaks
10 of not less than ten (10) minutes for each consecutive four (4) hour shift. Defendants also failed to
11 permit Employees to leave the premises for rest breaks.

12 62. Moreover, Defendants failed to compensate Employees for each rest period not
13 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
14 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
15 accordance with this section, the employer shall pay the employee one hour of pay at the
16 employee's regular rate of compensation for each workday that the rest period is not provided.
17 Defendants failed to compensate the Employees in the Class for each rest period not provided or
18 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
19 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
20 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
21 or by otherwise incorrectly calculating the regular rate.

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

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PAY VACATION WAGES**

27 **(Against All Defendants)**

28 64. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

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

6 66. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
7 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
8 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

9 67. In addition, Defendants failed to pay Employees all accrued and vested vacation as
10 wages in violation of Labor Code § 227.3.

11 68. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
12 to Labor Code § 227.3.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO COMPLY WITH LABOR CODE § 245 *ET SEQ.* AND 246**

15 **(Against All Defendants)**

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

18 70. California Labor Code § 245 *et seq.* requires that Defendants provide paid sick time
19 to Employees, including at the amount, terms, and rate of compensation set forth in said law. At
20 times relevant, Defendants have failed compute the amount due for paid sick time in conformance
21 with the pay calculation under California Labor Code § 246(1).

22 71. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
23 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
24 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
25 calculating the amount of paid sick time due when sick time is used according to the requirements
26 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
27 rate, in violation of the law.

28 72. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor

Code §§ 245 *et seq.* and 246.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES
IN VIOLATION OF LABOR CODE § 2802

(Against All Defendants)

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

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

75. Employees incurred necessary expenditures in the performance of their job duties for Defendants, namely the cost of personal cell phone usage, which was necessary to perform their duties under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to reimburse Employees for these necessarily incurred business expenses.

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

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)

(Against All Defendants)

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

78. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these

1 statements may be given to the employee separately from the payment of wages; in either case the
2 employer must give the employee these statements twice a month or each time wages are paid.

3 79. Defendants failed to provide Employees with accurate itemized wage statements in
4 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
5 Defendants, failed to include the above requirements enumerated above. Employees' wage
6 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and
7 failed to accurately set forth all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9).
9 Additionally, Defendants failed in their affirmative obligation to keep accurate records of the
10 correct overtime wages based on proper regular rate calculations that included nondiscretionary
11 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the
12 total amount of compensation of their Employees. Moreover, the wage statements given to
13 Employees by Defendants failed to accurately account for wages, overtime, and premium pay for
14 deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have
15 known were owed to Employees, as alleged hereinabove. The wage statements provided to
16 Employees were confusing and required Employees to engage in discovery and refer to outside
17 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
18 Employees.

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

24 81. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
25 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
26 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
28 award of costs and reasonable attorneys' fees.

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

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

NINTH CAUSE OF ACTION

FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174

AND 1174.5

(Against All Defendants)

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

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

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

87. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code § 1174.5. for the three (3) years prior to the filing of this Complaint.

TENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 203
(Against All Defendants)

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

1 89. Numerous Employees are no longer employed by Defendants; they either quit
2 Defendants' employ or were fired therefrom.

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

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

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

11 **ELEVENTH CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

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

21 95. Plaintiff is a "person" within the meaning of Business & Professions Code
22 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
23 relief, restitution, and other appropriate equitable relief.

24 96. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
25 business practices.

26 97. Wage-and-hour laws express fundamental public policies. Paying employees their
27 wages and overtime, providing them with meal and rest periods, etc., are fundamental public
28 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously

1 to enforce minimum labor standards, to ensure that employees are not required or permitted to
2 work under substandard and unlawful conditions, and to protect law-abiding employers and their
3 employees from competitors who lower costs to themselves by failing to comply with minimum
4 labor standards.

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

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

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

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

19 102. Unless restrained by this Court Defendants will continue to engage in such
20 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
21 make such orders or judgments, including the appointment of a receiver, as may be necessary to
22 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
23 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
24 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
25 failed to pay.

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TWELFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.
(Against All Defendants)

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

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

103. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty provisions, without limitation, based on the following California Labor Code sections: §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

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

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

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

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter

1 shall be the same as those set out in Section 1197.1.

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

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

10 107. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
11 LWDA and Defendants postmarked on February 29, 2024. The LWDA has not provided notice of
12 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
13 letters.

14 **RELIEF REQUESTED**

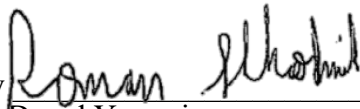
15 WHEREFORE, Plaintiff prays for the following relief:

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

6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
7. For penalties pursuant to Labor Code § 226.3, as may be proven;
8. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
9. For penalties pursuant to Labor Code § 227.3, as may be proven;
10. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
13. For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
14. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
16. For all general, special, and incidental damages as may be proven;
17. For an award of pre-judgment and post-judgment interest;
18. For an award providing for the payment of the costs of this suit;
19. For an award of attorneys' fees; and
20. For such other and further relief as this Court may deem proper and just.

DATED: May 6, 2024

D.LAW, INC.

By 
David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
DUSTIN DEBRUYN
and the putative class

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DATED: May 6, 2024

By 
David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
DUSTIN DEBRUYN
and the putative class

