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FRANCISCO RICO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

FRANCISCO RICO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RAL INVESTMENT CORPORATION, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 37-2024-00009385-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT:**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) FAILURE TO PAY ALL MINIMUM WAGES
OWED (LABOR CODE §§ 1194, 1194.2,
1197);**
- (3) FAILURE TO PROVIDE MEAL PERIODS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) FAILURE TO AUTHORIZE AND PERMIT
ALL REST PERIODS (LABOR CODE §§
226.7, 516, 558);**
- (5) FAILURE TO PAY ALL WAGES OWED
UPON TERMINATION (LABOR CODE §§
201-203);**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/06/2024 at 11:01:00 AM

Clerk of the Superior Court
By Sophia Felix, Deputy Clerk

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- (6) FAILURE TO INDEMNIFY ALL
NECESSARY BUSINESS EXPENDITURES
(LABOR CODE § 2802); and**
 - (7) UNFAIR COMPETITION (BUS & PROF
CODE § 17200 *et seq.*)**
 - (8) CIVIL PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT (LABOR
CODE § 2698 *et seq.*)**
- DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Francisco Rico (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against RAL
3 Investment Corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information
4 and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this FAC
7 for recovery of unpaid wages and penalties under California Business and Professions Code § 17200
8 *et. seq.*, Labor Code §§ 201-203, 204, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, 2698
9 *et seq.*, and Industrial Welfare Commission Wage Order 16 (“Wage Order 16”), in addition to seeking
10 declaratory relief and restitution. This FAC is brought pursuant to California Code of Civil Procedure
11 § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
12 the amount in controversy exceeds this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§ 395(a)
15 and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of
16 San Diego. Defendants own, maintain offices, transact business, have agent(s) within the County of
17 San Diego, and/or otherwise are found within the County of San Diego, and Defendants are within the
18 jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the four years immediately preceding the
22 filing of the lawsuit in this action and within the statute of limitations periods applicable to each cause
23 of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was,
24 and is, a victim of Defendants’ policies and/or practices complained of herein, lost money and/or
25 property, and has been deprived of the rights guaranteed by Labor Code §§ 201-203, 204, 226.7, 510,
26 512, 516 558, 1194, 1194.2, 1197, 1198, 2802, and California Business and Professions Code § 17200
27 *et seq.* (“Unfair Competition Law”); and Wage Order 16, which sets employment standards for
28 occupations in the construction, drilling, logging and mining industries, which includes the industry in

1 which Plaintiff worked for Defendants.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the four years
3 preceding the filing of the lawsuit and continuing to the present, Defendants did (and continue to do)
4 business by providing products and services to meet construction needs of its clients/customers.
5 Defendants employed Plaintiff and other, similarly-situated non-exempt employees within, among
6 other counties, San Diego County and the state of California and, therefore, were (and are) doing
7 business in San Diego County and the State of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
9 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
11 this FAC when such true names and capacities are discovered. Plaintiff is informed, and believes, and
12 based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate,
13 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
14 Plaintiff and the Classes (as defined in Paragraph 18) to be subject to the unlawful employment
15 practices, wrongs, injuries and damages complained of herein.

16 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing of the
19 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
20 and each of them, were the agents, servants, and employees of each and every one of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
22 within the course and scope of said agency and employment. Defendants, and each of them, approved
23 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
24 herein.

25 8. At all times mentioned herein, Defendants, and each of them, were members of and
26 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
27 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
28 that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt employee from approximately 2017 through on or about August 2021, at which time his employment was separated. Plaintiff was based out of San Diego and held the position of laborer/machine operator.

10. During Plaintiff's employment with Defendants, Plaintiff was typically scheduled to work from 7:00 a.m. to 3:30 p.m. However, Plaintiff would often work shifts and days deviating from this general schedule. Plaintiff often commenced work before the start of his scheduled shift and would also often work after his shift was scheduled to end. Defendants would keep track of Plaintiff's time worked and would unlawfully shave Plaintiff's work time and/or round Plaintiff's work time such that Plaintiff would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendants was not even handed over time and would almost exclusively round and shave in Defendants' favor such that Plaintiff was routinely unpaid for his time worked. As a result, Defendants failed to pay Plaintiff all required minimum and overtime wages.

11. During Plaintiff's employment with Defendants, Plaintiff often worked in excess of eight hours per workday and/or forty hours per work week, but did not receive proper overtime compensation equal to one and one-half times his regular rate of pay for all overtime hours worked.

12. Throughout Plaintiff's employment with Defendants, Plaintiff was not provided all legally required meal periods due to Defendants' meal period policies and practices. Specifically, Defendants did not require Plaintiff to clock out for his meal periods and, upon information and belief, failed to keep any records of meal periods taken by Plaintiff, in violation of California law. As a result, Plaintiff is informed and believes that Defendants unlawfully automatically deducted thirty minutes from Plaintiff's work time each shift for his meal period regardless of whether a meal period was taken or not. Further, as a result of the work demands imposed by Defendants, Plaintiff's meal periods were often late or otherwise unlawful.

13. Although Plaintiff was not provided with all legally-compliant meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendants maintained no

1 payroll code or other mechanism for the payment of meal period premium payments under Labor Code
2 § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt
3 employees.

4 14. Throughout Plaintiff's employment with Defendants, Plaintiff was not authorized and
5 permitted to take legally required rest periods due to Defendants' unlawful rest period policies and
6 practices. Defendants' rest period policies and practices fail to authorize and permit paid rest periods
7 for every four hours worked, *or major fraction thereof*. Specifically, due to the work demands imposed
8 by Defendants, Plaintiff and other non-exempt employees were often not authorized and permitted to
9 take a rest period. Further, Plaintiff and other non-exempt employees were not authorized and
10 permitted to take rest breaks of at least net ten minutes in violation of California law. Additionally,
11 Plaintiff and other non-exempt employees were not authorized and permitted to take a third rest period
12 when they worked shifts in excess of 10.0 hours.

13 15. On those occasions when Plaintiff was not authorized and permitted to take all legally-
14 compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the
15 required rest period premium for each workday in which he experienced a rest period violation as
16 mandated by Labor Code § 226.7.

17 16. Throughout Plaintiff's employment with Defendants, Defendants failed to reimburse
18 Plaintiff for expenses he incurred in direct consequence of the discharge of his duties including, without
19 limitation, expenses incurred for using his personal cellular phone and tools. Despite the necessity of
20 incurring expenses in the discharge of his duties, Plaintiff was never reimbursed for all necessary
21 expenditures he incurred as a direct consequence of the discharge of his duties, as mandated by Labor
22 Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

23 17. As a result of Defendants' failure to pay all overtime wages and failure to pay meal
24 period and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon
25 separation of his employment with Defendants.

26 **CLASS ACTION ALLEGATIONS**

27 18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following
28 Classes pursuant to § 382 of the Code of Civil Procedure:

- 1 a. The Overtime Class consists of all of Defendants' current and former non-exempt
2 employees in California who worked more than eight hours per day and/or forty hours
3 per week and were subject to Defendants' timekeeping policies and practices, during
4 the four years immediately preceding the filing of the lawsuit through the present.
- 5 b. The Minimum Wage Class consists of all of Defendants' current and former non-
6 exempt employees in California who were subject to Defendants' timekeeping
7 policies/practices, during the four years preceding the filing of the lawsuit through the
8 present.
- 9 c. The Meal Period Class consists of all of Defendants' current and former non-exempt
10 employees who: (1) worked at least one shift in excess of 5.0 hours during the four years
11 immediately preceding the filing of the lawsuit through the present.
- 12 d. The Rest Period Class consists of all of Defendants' current and former non-exempt
13 employees in California who worked at least one shift of 3.5 hours, during the four years
14 immediately preceding the filing of the lawsuit through the present.
- 15 e. The Waiting Time Penalty Class consists of all members of the: (i) Overtime Class; (ii)
16 Minimum Wage Class; (iii) Meal Period Class; and/or (iv) Rest Period Class, who
17 separated their employment with Defendants during the three years immediately
18 preceding the filing of the lawsuit through the present.
- 19 f. The Reimbursement Class: all of Defendants' current and former non-exempt
20 employees who worked in California who were required to use their personal cellular
21 phone and/or purchase tools in connection with the discharge of their work duties, the
22 four years immediately preceding the filing of the lawsuit through the present.
- 23 g. The UCL Class consists of members of the: (i) Overtime Class; (ii) Minimum Wage
24 Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Waiting Time Penalty Class;
25 and (vi) Reimbursement Class.

26 19. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to
27 amend or modify the description of the various classes with greater specificity or further division into
28 subclasses or limitation to particular issues.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

- i. Whether Defendants' properly paid all minimum wages and/or overtime wages at the correct regular rate of pay and/or paid for all hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants paid all wages owed to its terminated/separated employees at the time of said termination/separation pursuant to Labor Code §§ 201-203;
- v. Whether Defendants properly reimbursed the members of the Reimbursement Class for all necessary business expenses incurred; and
- vi. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, meal period, rest period, and reimbursement

1 policies and practices. As such, the common questions predominate over individual questions
2 concerning each individual class member's showing as to their eligibility for recovery or as to the
3 amount of their damages.

4 **23. Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
5 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of
6 limitations period applicable to each cause of action pled in the lawsuit. As alleged herein, Plaintiff,
7 like the members of the Classes, was not provided all legally required minimum wages, overtime
8 wages, was not provided with all required meal periods, did not receive meal period premium wages
9 when he was not provided compliant meal periods, did not receive rest period premium wages when
10 he was not authorized and permitted to take compliant rest periods, was not provided with all wages
11 upon termination, and was not reimbursed for necessary business expenses incurred.

12 **24. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
13 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
14 attorneys are ready, willing and able to fully and adequately represent the members of the Classes and
15 Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in
16 state and federal courts in the past and are committed to vigorously prosecuting this action on behalf
17 of the members of the Classes.

18 **25. Superiority:** The California Labor Code is broadly remedial in nature and serves an
19 important public interest in establishing minimum working conditions and standards in California.
20 These laws and labor standards protect the average working employee from exploitation by employers
21 who have the responsibility to follow the laws and who may seek to take advantage of superior
22 economic and bargaining power in setting onerous terms and conditions of employment. The nature
23 of this action and the format of laws available to Plaintiff and members of the Classes make the class
24 action format a particularly efficient and appropriate procedure to redress the violations alleged herein.
25 If each employee were required to file an individual lawsuit, Defendants would necessarily gain an
26 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
27 each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring
28 each member of the Classes to pursue an individual remedy would also discourage the assertion of

1 lawful claims by employees who would be disinclined to file an action against their former and/or
2 current employer for real and justifiable fear of retaliation and permanent damages to their careers at
3 subsequent employment. Further, the prosecution of separate actions by the individual class members,
4 even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
5 with respect to the individual class members against Defendants herein; and which would establish
6 potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect
7 to individual class members which would, as a practical matter, be dispositive of the interest of the
8 other class members not parties to adjudications or which would substantially impair or impede the
9 ability of the class members to protect their interests. Further, the claims of the individual members of
10 the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the
11 concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 18 are
12 maintainable as a Class under § 382 of the Code of Civil Procedure.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

15 **(AGAINST ALL DEFENDANTS)**

16 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198
18 which provide that all non-exempt employees are entitled to all overtime wages for all overtime worked
19 (hours in excess of 8 in one day and/or 40 in one week), and provide a private right of action for the
20 failure to pay all overtime compensation for overtime work performed.

21 28. At all times relevant herein, Defendants were required to properly compensate Plaintiff
22 and the members of the Overtime Class for all overtime hours worked pursuant to California Labor
23 Code §§ 510 and 1194, and Wage Order 16. Labor Code § 510 and Wage Order 16, Section 3 require
24 an employer to pay an employee “one and one-half (1½) times the regular rate of pay” for work in
25 excess of 8 hours per workday and/or in excess of 40 hours per workweek. Labor Code § 510 and
26 Wage Order 16, Section 3 also require an employer to pay an employee double the employee’s regular
27 rate for work in excess of 12 hours each workday and/or in excess of 8 hours on the seventh consecutive
28 day of work in the workweek. Defendants caused Plaintiff and the members of the Overtime Class to

1 work in excess of 8 hours in a workday and/or 40 hours in a workweek but did not properly compensate
2 Plaintiff and the members of the Overtime Class at one and one-half their regular rate of pay for such
3 hours.

4 29. The foregoing practices and policies are unlawful and create entitlement to recovery by
5 Plaintiff and the members of the Overtime Class in a civil action for the unpaid amount of overtime
6 premium owing, including interest thereon, as well as statutory penalties, civil penalties, and attorneys'
7 fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6, 510, 558, 1194 and 1198, Wage
8 Order 16, California Code of Civil Procedure § 1021.5 California Code of Civil Procedure § 1021.5,
9 and Civil Code §§ 3287(b) and 3289.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL MINIMUM WAGES OWED**

12 **(AGAINST ALL DEFENDANTS)**

13 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 31. This cause of action is brought pursuant to Labor Code §§ 204, 558, 1194 and 1198
15 which provide that all non-exempt employees are entitled to all minimum wages for all hours worked,
16 and provide a private right of action for the failure to pay all minimum wage compensation for all
17 work performed.

18 32. At all times relevant herein, Defendants were required to properly compensate Plaintiff
19 and the members of the Minimum Wage Class for all hours worked pursuant to California Labor Code
20 §§ 1194, 1197 and 1198, and Wage Order 16. Wage Order 16, Section 4 requires an employer to pay
21 to every employee on the established payday for the period involved not less than the applicable
22 minimum wage for all hours worked in the payroll period. Defendants caused Plaintiff and the
23 members of the Minimum Wage Class to work hours in a workweek but did not properly compensate
24 Plaintiff and the members of the Minimum Wage Class at least minimum wages for such hours.

25 33. At all times relevant herein, Defendants lacked good faith and had no reasonable
26 grounds for believing that their practices in failing to pay all minimum wages owed at the applicable
27 rate was not a violation of any provision of the Labor Code relating to minimum wage, or an order of
28 the Industrial Welfare Commission. Defendants therefore, in addition to owing minimum wages to

1 Plaintiff and the members of the Minimum Wage Class, also owe liquidated damages in an amount
2 equal to the wages unlawfully unpaid, and interest thereon, pursuant to Labor Code § 1194.2.

3 34. The foregoing practices and policies are unlawful and create entitlement to recovery by
4 Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of
5 minimum wages owing, including interest thereon, as well as statutory penalties, liquidated damages,
6 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6,
7 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 16, California Code of Civil Procedure §
8 1021.5, and Civil Code §§ 3287(b) and 3289.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(AGAINST ALL DEFENDANTS)**

12 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in
14 their affirmative obligation to provide all of their non-exempt employees in California, including
15 Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance
16 with the mandates of the California Labor Code and Wage Order 16, § 11. Despite Defendants'
17 violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal
18 Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204,
19 210, 226.7, and 512.

20 37. As a result, Defendants are responsible for paying premium compensation for meal
21 period violations pursuant to Labor Code §§ 226.7, 512, and 558, and Wage Order 16, including
22 interest thereon, statutory penalties, civil penalties, and costs of suit.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

25 **(AGAINST ALL DEFENDANTS)**

26 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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39. Wage Order 16, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

40. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

41. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, Wage Order 16, California Code of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(AGAINST ALL DEFENDANTS)

42. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

43. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

44. Defendants failed to timely pay Plaintiff all of his final wages at the time of termination, which include, among other things, underpaid minimum and overtime wages and meal period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Penalty Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

45. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Penalty Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Penalty Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

**FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES
(AGAINST ALL DEFENDANTS)**

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. This cause of action is brought pursuant to Labor Code § 2802, which requires an employer to “indemnify his or her 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.”

48. As alleged herein, and due to their unlawful reimbursement policies and/or practices, Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class all of their necessary business expenses, including, among other things, expenses related to the use of their personal cellular phone and tools.

49. As a proximate result of Defendants' failure to indemnify Plaintiff and the members of the Reimbursement Class for their necessary business expenses incurred, Plaintiff and members of the Reimbursement Class are entitled to damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

51. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to properly pay all minimum and overtime wages, provide all required meal and rest periods, or

1 pay premium payments in lieu thereof.

2 52. Defendants' utilization of these unfair and/or unlawful business practices deprived
3 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
4 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
5 Defendants' competitors who have been and/or are currently employing workers and attempting to do
6 so in honest compliance with applicable wage and hour laws.

7 53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
8 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
9 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
10 converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

11 54. The acts complained of herein occurred within the last four years immediately preceding
12 the filing of the lawsuit in this action.

13 55. Plaintiff was compelled to retain the services of counsel to file this court action to
14 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of
15 Defendants' current non-exempt employees, and to enforce important rights affecting the public
16 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is
17 entitled to recover under Code of Civil Procedure § 1021.5.

18 **EIGHTH CAUSE OF ACTION**

19 **VIOLATION OF THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004**
20 **(AGAINST ALL DEFENDANTS)**

21 56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 57. Defendants have committed several Labor Code violations against Plaintiff and other
23 Aggrieved Employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor Code § 2698
24 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action
25 against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and
26 the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not
27 limited to: (1) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
28 to Labor Code § 226.3 per employee per pay period; and/or (2) \$100.00 for each initial violation and

\$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and the aggrieved employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and the aggrieved employees;
- e) Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and other Aggrieved Employees for necessary work expenditures;
- f) Defendant violated Labor Code §§ 204 and 210 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Plaintiff and other aggrieved employees; and
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.

58. On February 28, 2024, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 57 (a)-(h). Attached hereto as **Exhibit 1** is a true and correct copy of the February 28, 2024, correspondence. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil

penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1197, 1197.1 and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code § 203;
9. Upon the Sixth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Class of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;

(2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (4) no less than \$5,000.00 and up to \$25,000.00 for each violation pursuant to Labor Code § 226.8(b) and (c); and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 57 (a)-(h) above.

12. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

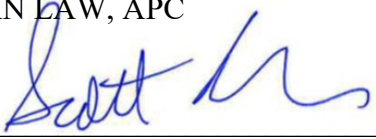
13. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

14. For such other and further relief the Court may deem just and proper.

Dated: May 6, 2024

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Milan Moore
Attorneys for Plaintiff
FRANCISCO RICO

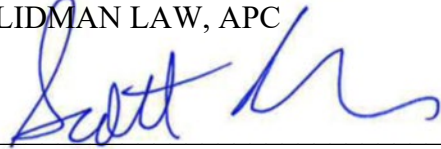
DEMAND FOR JURY TRIAL

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

Dated: May 6, 2024

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Milan Moore
Attorneys for Plaintiff
FRANCISCO RICO

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

February 28, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RAL Investment Corporation, a California
corporation
10065 Old Grove Road, Suite 200
San Diego, CA 92131

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

RAL Investment Corporation, a California
corporation
c/o: Alec Ricardo Lopez, Registered Agent
4196 Texas Street
San Diego, CA 92104

Re: *Francisco Rico v. RAL Investment Corporation*

To Whom It May Concern:

Please be advised that this law firm represents Francisco Rico (“Mr. Rico”) in claims arising from his employment with RAL Investment Corporation (“Defendant”). Mr. Rico is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly, non-exempt employees working for Defendant in California during the one year immediately preceding the date of this letter through the present date, and continuing through a civil judgment if the LWDA takes no action and Mr. Rico files a civil lawsuit seeking civil penalties.

Mr. Rico was employed by Defendant as a non-exempt employee from approximately 2017 through on or about August 2021, at which time his employment was separated. Mr. Rico was based out of San Diego and held the position of laborer/machine operator.

During Mr. Rico’s employment with Defendant, Mr. Rico was typically scheduled to work from 7:00 a.m. to 3:30 p.m. However, Mr. Rico would often work shifts and days deviating from this general schedule. Mr. Rico often commenced work before the start of his scheduled shift and would also often work after his shift was scheduled to end. Defendant would keep track of Mr. Rico’s time worked and would unlawfully shave Mr. Rico’s work time and/or round Mr. Rico’s work time such that Mr. Rico would not be fully paid for all time worked. This time-shaving and/or rounding practice

utilized by Defendant was not even handed over time and would almost exclusively round and shave in Defendant's favor such that Mr. Rico was routinely unpaid for his time worked. As a result, Defendant failed to pay Mr. Rico all required minimum and overtime wages.

During Mr. Rico's employment with Defendant, Mr. Rico often worked in excess of eight hours per workday and/or forty hours per work week, but did not receive proper overtime compensation equal to one and one-half times his regular rate of pay for all overtime hours worked.

Throughout Mr. Rico's employment with Defendant, Mr. Rico was not provided all legally required meal periods due to Defendant's meal period policies and practices. Specifically, Defendant did not require Mr. Rico to clock out for his meal periods and, upon information and belief, failed to keep any records of meal periods taken by Mr. Rico, in violation of California law. As a result, Mr. Rico is informed and believes that Defendant unlawfully automatically deducted thirty minutes from Mr. Rico's work time each shift for his meal period regardless of whether a meal period was taken or not. Further, as a result of the work demands imposed by Defendant, Mr. Rico's meal periods were often late or otherwise unlawful.

Although Mr. Rico was not provided with all legally-compliant meal periods to which he was entitled, Defendant failed to compensate Mr. Rico with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their non-exempt employees.

Throughout Mr. Rico's employment with Defendant, Mr. Rico was not authorized and permitted to take legally required rest periods due to Defendant's unlawful rest period policies and practices. Defendant's rest period policies and practices fail to authorize and permit paid rest periods for every four hours worked, *or major fraction thereof*. Specifically, due to the work demands imposed by Defendant, Mr. Rico and other non-exempt employees were often not authorized and permitted to take a rest period. Further, Mr. Rico and other non-exempt employees were not authorized and permitted to take rest breaks of at least net ten minutes in violation of California law. Additionally, Mr. Rico and other non-exempt employees were not authorized and permitted to take a third rest period when they worked shifts in excess of 10.0 hours.

On those occasions when Mr. Rico was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant failed to compensate Mr. Rico with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7.

Throughout Mr. Rico's employment with Defendant, Defendant failed to reimburse Mr. Rico for expenses he incurred in direct consequence of the discharge of his duties including, without limitation, expenses incurred for using his personal cellular phone and tools. Despite the necessity of incurring expenses in the discharge of his duties, Mr. Rico was never reimbursed for all necessary expenditures he incurred as a direct consequence of the discharge of his duties, as mandated by Labor Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all overtime wages and failure to pay meal period and rest period premium wages, Defendant failed to pay all wages owed to Mr. Rico upon separation of his

employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"):

Minimum Wage Violations

Defendant was required to pay Mr. Rico and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197, 1197.1; The Wage Order 16, § 4. Mr. Rico and other aggrieved employees were not paid for all hours worked due to Defendant's unlawful practices and procedures. As alleged above, Defendant's unlawful policies and procedures were to pay pursuant to the scheduled hours, even though Defendant knowingly permitted and required Mr. Rico and other aggrieved employees to be under their direction and control prior to or after clocking in or out. Defendant would keep track of Mr. Rico's time worked and would unlawfully shave Mr. Rico's work time and/or round Mr. Rico's work time such that Mr. Rico would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendant was not even handed over time and would almost exclusively round and shave in Defendant's favor such that Mr. Rico was routinely unpaid for his time worked. These practices by Defendant resulted in Defendant not paying Mr. Rico and other aggrieved employees for all wages owed for the work they performed, including failing to pay them all required minimum wages.

Overtime Violations

Defendant was required to pay Mr. Rico and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 16, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." As alleged above, Defendant's unlawful policies and procedures were to pay pursuant to the scheduled hours, even though Defendant knowingly permitted and required Mr. Rico and other aggrieved employees to be under their direction and control prior to or after clocking in or out. Defendant would keep track of Mr. Rico's time worked and would unlawfully shave Mr. Rico's work time and/or round Mr. Rico's work time such that Mr. Rico would not be fully paid for all time worked. This time-shaving and/or rounding practice utilized by Defendant was not even handed over time and would almost exclusively round and shave in Defendant's favor such that Mr. Rico was routinely unpaid for his time worked. Furthermore, during Mr. Rico's employment with Defendant, Mr. Rico often worked in excess of eight hours per workday and/or forty hours per work week, but did not receive proper overtime compensation equal to one and one-half times his regular rate of pay for all overtime hours worked.

As a result of Defendant's policies and/or practices that fail to compensate for all hours worked, Mr. Rico and other aggrieved employees were deprived all required overtime wages earned.

Meal Period Violations

As alleged above, Defendant failed to provide the aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 16, § 11. As described above, Defendant did not require Mr. Rico to clock out for his meal periods and, upon information and belief, failed to keep any records of meal periods taken by Mr. Rico, in violation of California law. As a result, Mr. Rico is informed and believes that Defendant unlawfully automatically deducted thirty minutes from Mr. Rico's work time each shift for his meal period regardless of whether a meal period was taken or not. Further, as a result of the work demands imposed by Defendant, Mr. Rico's meal periods were often late or otherwise unlawful. Therefore, the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Rico and other aggrieved employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit their aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 12. Specifically, Mr. Rico and other aggrieved employees were not authorized and permitted to take all required rest periods due to Defendant's rest period policies/practices, which upon information and belief, fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Additionally, Defendant has often failed to authorize and permit a third rest period when Mr. Rico worked a shift in excess of 10.0 hours. As a result, Mr. Rico and the aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Business Expenses

Defendant failed to reimburse Mr. Rico and other aggrieved employees for necessary work expenses, including, but not limited to, expenses incurred for the reasonable portion of cellular phone expenses incurred in the direct discharge of the job duties of such employees. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 16, § 9, and Labor Code § 2802 ("An employer shall indemnify his or her 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.") Mr. Rico and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Rico and other aggrieved employees all of their final wages at the time of separation, which included, among other things, unpaid minimum and/or overtime wages, and meal and rest period premium wages.

As an “aggrieved employee,” Mr. Rico will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Rico’s own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Rico and other aggrieved employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Rico and other aggrieved employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Rico and the aggrieved employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Rico and the aggrieved employees;
- e) Defendant violated Labor Code § 2802 by failing to reimburse Mr. Rico and other Aggrieved Employees for necessary work expenditures;
- f) Defendant violated Labor Code §§ 204 and 210 by failing to pay Mr. Rico and other aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Rico and other aggrieved employees; and
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Rico and other aggrieved employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC

Scott M. Lidman