

D.LAW, INC.

Emil Davtyan (SBN 299363)

Emil@d.law

David Yeremian (SBN 226337)

d.yeremian@d.law

Roman Shkodnik (SBN 285152)

r.shkodnik@d.law

Robert Payaslyan (SBN 340331)

r.payaslyan@d.law

880 E Broadway

Glendale, CA 91205

Telephone: (818) 962-6465

Fax: (818) 962-6469

Attorneys for Plaintiff REYNALDO LABO, on behalf
of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

REYNALDO LABO, an individual, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

AUTOMOTIVE RACING PRODUCTS,
INC., a California corporation; ARP, an entity
of unknown form; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 2024CUOE21294

CLASS ACTION

Assigned for All Purposes To:

Hon. Ben Coats

Dept.: 43

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Failure to Pay Vacation Wages Under Labor Code § 227.3;
4. Failure to Comply with Labor Code § 245 et seq. and 246;
5. Meal Period Liability Under Labor Code § 226.7;
6. Rest-Break Liability Under Labor Code § 226.7;
7. Violation of Labor Code § 226;
8. Violation of Labor Code § 203;
9. Violation of Business & Professions Code § 17200 et seq.; and
10. Penalties Pursuant to Labor Code § 2699, et seq.

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff REYNALDO LABO (hereinafter "Plaintiff"), on behalf of himself and other
2 similarly situated non-exempt, hourly employees employed by Defendants in California
3 (collectively, "Employees"; individually, "Employee"), complains of Defendants, and each of them,
4 as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all current and former Employees
7 within the State of California who, at any time from four (4) years prior to the filing of this lawsuit,
8 are or were employed as non-exempt, hourly employees by Defendants AUTOMOTIVE RACING
9 PRODUCTS, INC., a California corporation, ARP, an entity of unknown form, and DOES 1
10 through 50, inclusive (all defendants being collectively referred to herein as "Defendants"). Plaintiff
11 alleges that Defendants, and each of them, violated various provisions of the California Labor Code,
12 relevant orders of the Industrial Welfare Commission ("IWC"), and the California Business &
13 Professions Code, and seeks redress for these violations.

14 2. Plaintiff is a resident of California and, during the time period relevant to this
15 Complaint, was employed by Defendants as a non-exempt hourly employee within the State of
16 California, and within Ventura County. Defendants AUTOMOTIVE RACING PRODUCTS, INC.
17 and ARP are auto parts manufacturers located in Ventura, California. Plaintiff and the other Class
18 members were employed by Defendants as hourly, non-exempt Employees. Plaintiff worked at
19 Defendants' behest without being paid all wages due and without being provided all required breaks.
20 More specifically, Plaintiff and the other similarly situated Class members were employed by
21 Defendants and (1) shared similar job duties and responsibilities (2) were subjected to the same
22 policies and practices (3) and endured similar violations at the hands of Defendants as the other
23 Employee Class members who served in similar and related positions.

24 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
25 and failed to record accurate time worked by these Employees, failed to pay all wages due and owing
26 at termination or resignation, and provided Plaintiff and the Class members with inaccurate wage
27 statements that prevented them from learning of these unlawful pay practices. Defendants also failed
28 to provide Plaintiff and the Class with lawful meal and rest periods, as Employees were required to

1 remain under Defendants' control and were not provided with the opportunity to take full
2 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
3 applicable paragraphs of the IWC Wage Orders.

4 4. Defendant AUTOMOTIVE RACING PRODUCTS, INC. is a California corporation
5 located in Ventura, California. AUTOMOTIVE RACING PRODUCTS, INC. is listed as the
6 employer on various documents issued to Plaintiff, and upon information and belief to Class
7 members. AUTOMOTIVE RACING PRODUCTS, INC. lists an address in Ventura, California with
8 the California Secretary of State, and, upon information and belief, employs Plaintiff and the
9 Employees at Defendants' facility in Santa Paula, California.

10 5. Defendant ARP, is an entity of unknown form with its principle executive offices in
11 Los Angeles, California and has been listed as the employer on various documents issued to Plaintiff
12 during the relevant time period. ARP does not list a California address with the California Secretary
13 of State, but upon information and belief, employs Plaintiff and the Aggrieved Employees in
14 Ventura County, including at Defendants' offices and facilities in Santa Paula, California, and
15 throughout California and conducts business throughout California.

16 6. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as
18 a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code
19 of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to
20 California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and
21 liabilities giving rise to this lawsuit occurred, at least in part in Ventura County where Defendants
22 operate and employ Plaintiff and Class members.

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

1 reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when
2 their identities become known.

3 8. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
4 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out
5 a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
6 Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all
7 respects as the employers or joint employers of Employees. Defendants, and each of them, exercised
8 control over the wages, hours or working conditions of Employees, created and implemented the
9 policies and practices that governed the employment of Plaintiff and the Class members and dictated
10 their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other
11 Employee Class members to work, or engaged them, thereby creating a common law employment
12 relationship with the Employee Class members. Therefore, Defendants, and each of them, employed
13 or jointly employed the Employee Class members.

14 **FACTUAL BACKGROUND**

15 9. The Employees who comprise the Class, including Plaintiff, are non-exempt
16 employees pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”).
17 During the period of four years prior to the filing of this action through its resolution, the Employee
18 Class members were employed by Defendants and worked in non-exempt positions at the direction
19 of Defendants in the State of California. Plaintiff contends that Plaintiff and the Class members
20 were not paid by Defendants for all hours worked. Plaintiff also contends that Defendants failed to
21 pay Plaintiff and the Class members all wages due and owing, including by requiring off the clock
22 work, failing to provide meal and rest breaks, and failing to furnish accurate wage statements, all
23 in violation of various provisions of the California Labor Code and applicable paragraphs of the
24 IWC Wage Orders.

25 10. During the course of Plaintiff and the Class members’ employment with
26 Defendants, they were not paid all wages they were owed, including for all work performed
27 (resulting in “off the clock” work) and for all their overtime hours worked. This has resulted in
28 systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders.

1 Upon information and belief, Defendants employ other non-exempt, hourly employees in similar
2 jobs and related positions at their facility in California.

3 11. Defendants required Plaintiff and the Class members to perform work related duties
4 off the clock and to remain under Defendants' control during times when they should have been on
5 break or otherwise off the clock, including before and after their work shifts. Plaintiff and, upon
6 information and belief, the other Class members were required to arrive and perform work before
7 their scheduled shift start times and to perform other off the clock work, including waiting at the
8 designated parking lot gate for someone to open the gate so Employees can park their vehicles,
9 waiting in line at the main entrance to be let inside the facility, and waiting in line at the time clock
10 once inside the facility to clock in. This process was exasperated by the fact that Defendants facility
11 operated on a bell schedule, so large groups of Employees would enter and exit the building at the
12 same time for shifts and meal breaks, creating even further delay when entering and exiting the
13 building and when using the time clock. Upon information and belief, Defendants failed to
14 compensate Plaintiff and the Class members for the time they were under control of Defendants
15 before their scheduled shift start time.

16 12. Plaintiff and, upon information and belief, the other Class members were also
17 required to stay past their schedule shift end time and perform work after clocking out for the day,
18 including waiting in line to clock out at the single time clock in the facility, and then waiting in line
19 at the parking lot gate to exit. Again, this process was exasperated by the fact that Defendants
20 facility operated on a bell schedule, so large groups of Employees would exit the building at the
21 same time for shifts and meal breaks, creating lines upon exiting and at the time clock. Upon
22 information and belief, Defendants failed to compensate Plaintiff and the Class members for the
23 time they were under control of Defendants after clocking out for the day.

24 13. Defendants' unlawful timekeeping practices regarding off the clock work also
25 resulted in failure to pay Plaintiff and the Class members for overtime hours worked at the correct
26 overtime premium rate. With the hours worked off the clock before shifts commenced, and when
27 Plaintiff and the Class members worked past eight hours on their shifts, they were not paid an
28 overtime premium for these hours worked over eight.

1 14. By the off the clock work addressed above, the Employees in the Class began
2 incurring overtime hours before the alleged eight hour mark when Defendants began paying any
3 overtime rates of pay, and Defendants thus failed to pay all overtime hours at the correct overtime
4 rate of pay.

5 15. Consequently, Defendants systematically underpaid Plaintiff and the Class
6 members by failing to pay them at the required overtime rates for all hours over eight in a work
7 shift or over forty in a work week, and all hours over twelve in a day at the required double time
8 rate. Upon information and belief, the Class members were bound by similar scheduling and
9 timekeeping policies and endured similar violations at Defendants' hands as Plaintiff.

10 16. The failure to pay for all hours worked and underpayment of wages to Plaintiff and
11 the Class members is and has been a direct consequence of Defendants' unlawful compensation
12 policies and practices, which upon information and belief applied uniformly to Class members. As
13 a result of the above-described unlawful requirements to work off the clock, the failure to accurately
14 record all hours worked and pay wages at the correct rates, and the other wage violations they
15 endured at Defendants' hands, Plaintiff and the Class members were not properly paid all wages
16 earned and all wages owed to them by Defendants, including when working more than eight hours
17 in any given day and/or more than forty hours in any given week. Defendants also failed to maintain
18 timekeeping records for Plaintiff and Employees that would permit them to discover the nature and
19 extent of Defendants' unlawful practices.

20 17. Therefore, from at least four years prior to the filing of this lawsuit and continuing
21 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
22 hours worked and failing to pay minimum wages for all time worked, as required by California law.
23 Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
24 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
25 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
26 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
27 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

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1 18. Additionally, Defendants paid Plaintiffs and Employees nondiscretionary
2 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
3 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
4 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
5 rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when
6 Plaintiffs and Employees worked overtime and received nondiscretionary commissions, incentive
7 pay, and/or nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a
8 lower overtime rate than required.

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

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

25 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the
26 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,
27 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
28 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or

1 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
2 vacation pay. Therefore, during times when Plaintiffs and Employees worked overtime and
3 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
4 Defendants failed to pay all vacation pay by paying a lower overtime rate than required.

5 22. Defendants also had a common policy and practice of systemically failing to pay
6 Plaintiff and Class members the requisite and accrued vacation time pay in accordance with
7 California law. Specifically, Plaintiff and Class members accrued vested vacation time and/or paid
8 time off. However, Defendants failed to pay all accrued vacation time and/or paid time off owed to
9 Plaintiff and Class members upon their separation from employment.

10 23. Additionally, from at least four (4) years prior to the filing of this lawsuit and
11 continuing to the present, Defendants have regularly required Employees to work shifts in excess of
12 five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30)
13 minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of
14 not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one hour of
15 wages at each Employee’s effective hourly rate of pay, for each meal period that Defendants failed
16 to provide or deficiently provided. The above described off the clock work wherein Plaintiff and
17 Class members had to stand in lines to clock in and out and enter and exit the building contributed
18 to Defendants’ common policy of failing to provide lawful meal periods to Plaintiff and the Class
19 members, as required under the Labor Code and Paragraph 11 of the IWC Wage Order(s) as it
20 significantly shortened the amount of time Plaintiff and Class members had to take a timely, lawful
21 meal period. Defendants similarly failed to authorize and permit Plaintiff and the employee Class
22 Members to take all required 10-minute rest breaks, as required under the Labor Code and Paragraph
23 12 of the IWC Wage Order(s).

24 24. Defendants thus failed to provide all the legally required unpaid, off-duty meal
25 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
26 members, as required by the applicable Wage Order and Labor Code. Additionally, as addressed
27 above, Defendants followed a practice of requiring off the clock work in a manner that would impact
28 when Employees were to receive meal periods and rest breaks, thus leading to further violations.

1 25. As a result, Defendants' failure to provide Plaintiff and the Class members with all
2 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods
3 is and will be evidenced by Defendants' business records, or lack thereof. As further detailed above,
4 Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each Employee's
5 effective regular hourly rate of compensation for each meal period or rest break that Defendants
6 failed to provide or deficiently provided.

7 26. Defendants have also consistently failed to provide Class members with timely,
8 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
9 including by the above-described requirement of off the clock work, failure to pay all overtime and
10 double time wages owed, and failure to pay premium wages for unprovided or otherwise unlawful
11 meal and rest breaks, or by miscalculating any overtime or meal period or rest break premium wages.
12 Defendants have also made it difficult to account with precision for the unlawfully withheld wages
13 and meal and rest period compensation owed to Plaintiff and the Class, during the liability period,
14 because they did not implement and preserve a record-keeping method as required for non-exempt
15 employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California
16 Wage Orders. Upon information and belief, time clock punches were not accurately maintained for
17 work shifts and meal periods, which were automatically presumed by Defendants to have been
18 lawfully provided when they were not. Defendants also failed to accurately record and pay for all
19 regular and overtime hours worked and submitted by Plaintiff and the Class members, including by
20 failing to pay all overtime hours worked. Additionally, Specifically, Defendants failed in their
21 affirmative obligation to keep accurate records of the correct overtime wages based on proper
22 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
23 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.

24 27. Defendants have thus also failed to comply with Labor Code § 226(a) by inaccurately
25 reporting total hours worked and total wages earned by Plaintiff and the Class members, along with
26 the appropriate applicable rates, among others requirements. Plaintiff and Class members are
27 therefore entitled to penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code §
28 226(b). Defendants have also failed to comply with paragraph 7 of the applicable California IWC

1 Wage Orders by failing to maintain time records showing when the employee begins and ends each
2 work period, meal periods, and wages earned pursuant to Labor Code § 226.7, and total daily hours
3 worked by itemizing in wage statements all deductions from payment of wages and accurately
4 reporting total hours worked.

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

9 29. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
10 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*,
11 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698,
12 2699, *et seq.*

13 30. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
14 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
15 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
16 fraudulent practices alleged in this Complaint.

17 **CLASS ALLEGATIONS**

18 31. Plaintiff brings this class action on behalf of himself and all others similarly situated
19 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
20 “Class members”) defined as follows: “All individuals employed by Defendants at any time during
21 the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by
22 the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees at
23 Defendants’ locations within the State of California.” Further, Plaintiff seeks to represent the
24 Subclasses composed of and defined as follows:

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

27 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
28 compensated for all hours worked for Defendants at the required rates of pay, including for all hours

1 worked in excess of eight in a day and/or forty in a week.

2 c. Subclass 3. Vacation Wages Subclass. All Class members who earned vacation time
3 and/or paid time off without receiving compensation for all vested paid vacation.

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

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

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

13 g. Subclass 7. Wage Statement Subclass. All Class members who, within the applicable
14 limitations period, were not provided with accurate itemized wage statements.

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

19 i. Subclass 10. UCL Subclass. All Class members who are owed restitution as a result
20 of Defendants' business acts and practices, to the extent such acts and practices are found to be
21 unlawful, deceptive, and/or unfair.

22 32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify
23 the class description with greater particularity or to provide further division into subclasses or
24 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
25 against Defendants, the Class Period should be adjusted accordingly.

26 33. Defendants, as a matter of company policy, practice and procedure, and in violation
27 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
28 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged in

1 a practice whereby Defendants failed to correctly calculate and pay compensation for the time
2 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the
3 benefit of this work, required Employees to perform this work and permitted or suffered to permit
4 this work. Defendants have uniformly denied these Class members wages to which these employees
5 are entitled, and failed to provide meal periods or authorize and permit rest periods, in order to
6 unfairly cheat the competition and unlawfully profit.

7 34. This action has been brought and may properly be maintained as a class action under
8 the provisions of Code of Civil Procedure § 382 because there is a well-defined community of
9 interest in this litigation and the proposed Class is easily ascertainable from the employment records
10 for Plaintiff and the Class members that Defendants are required to maintain under California law.

11 **A. Numerosity**

12 35. The potential members of the class as defined are so numerous that joinder of all the
13 member of the class is impracticable. While the precise number of class members has not been
14 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
15 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the Class
16 definition within the State of California. Plaintiff alleges that Defendants' employment records will
17 provide information as to the number and location of all Class members.

18 **B. Commonality**

19 36. There are questions of law and fact common to the Class that predominate over any
20 questions affecting only individual Class members. The common questions are numerous and
21 substantial and flow from Defendants' uniform policies and/or practices of violating the California
22 Labor Code addressed above. As such, these common questions predominate over individual
23 questions concerning each individual Class Member's showing as to his or her eligibility for
24 recovery or as to the amount of damages. These common questions of law and fact include:

- 25 a. Whether Defendants failed to pay Employees minimum wages;
- 26 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 27 c. Whether Defendants failed to pay Employees overtime as required under Labor Code
- 28 § 510;

- 1 d. Whether Defendants failed to pay Employees vacation wages as required under
2 Labor Code § 227.3;
- 3 e. Whether Defendants failed to pay Employees sick pay as required under Labor
4 Code § 245;
- 5 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC
6 Wage Orders, by failing to provide Employees with requisite meal periods or
7 premium pay in lieu thereof;
- 8 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
9 Orders, by failing to authorize and permit Employees to take requisite rest breaks or
10 provide premium pay in lieu thereof;
- 11 h. Whether Defendants violated Labor Code § 226(a) by providing Employees with
12 inaccurate wage statements;
- 13 i. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
14 wages and compensation due and owing at the time of termination of employment;
- 15 j. Whether Defendants' conduct was willful;
- 16 k. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
17 Orders by failing to maintain accurate records of Class members' earned wages and
18 work periods;
- 19 l. Whether Defendants violated Labor Code § 1194 by failing to compensate all
20 Employees during the relevant time period for all hours worked, whether regular or
21 overtime;
- 22 m. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq*;
- 23 n. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- 24 o. Whether Employees are entitled to equitable relief pursuant to Business and
25 Professions Code § 17200 *et seq.*

26 **C. Typicality**

27 37. The claims of the named Plaintiff are typical of those of the other Employees. The
28 Employee Class members all sustained injuries and damages arising out of and caused by

Defendants' common course of conduct and uniformly applied policies in violation of statutes, as well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for the off the clock work and meal and rest violations he was required to endure are typical of those of the other Class members.

D. Adequacy of Representation

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

E. Superiority of Class Action

39. 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 in the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

40. As to the issues raised in this case, a class action is superior to all other methods for the fair and efficient adjudication of this controversy, as joinder of all Class members is impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class members. Further, as the economic or other loss suffered by vast numbers of Class members may be relatively small, the expense and burden of individual actions makes it difficult for the Class members to individually redress the wrongs they have suffered. Moreover, in the event disgorgement is ordered, a class action is the only mechanism that will permit the employment of a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in managing this case as a class action, and proceeding on a class-wide basis will permit Employees to vindicate their rights for violations they endured which they would otherwise be foreclosed from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

41. 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 treatment.

1 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would set
2 forth the subject and nature of the instant action. The Defendants' own business records can be
3 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that
4 any further notice is required additional media and/or mailings can be used.

5 42. Defendants, as prospective and actual employers of the Employees in the Class, had
6 a special fiduciary duty to disclose to prospective Class members the true facts surrounding
7 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
8 Employees as well as the effect of any alleged arbitration agreements that may have been forced
9 upon them. In addition, Defendants knew they possessed special knowledge about pay practices and
10 policies, most notably intentionally refusing to pay for all hours actually worked which should have
11 been recorded in Defendants' pay records and the consequence of the alleged arbitration agreements
12 and policies and practices on the Employees and Class as a whole.

13 43. Plaintiff and the Employees in the Class did not discover the fact that they were
14 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
15 ever any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by
16 jury, right to collectively organize and oppose unlawful pay practices under California law as well
17 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable
18 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered their
19 claims.

20 **FIRST CAUSE OF ACTION**
21 **FAILURE TO PAY MINIMUM WAGES**
22 **(Against All Defendants)**

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

25 45. Defendants had a consistent policy of failing to pay Employees for all hours
26 worked. Employees would work hours and not receive all wages owed, including as alleged above
27 in connection with off the clock work and all the time required to remain on duty and under
28 Defendants' control during breaks, and due to the work demands placed upon them by Defendants'

1 management. To the extent any local wage ordinances were also applicable to paying the
2 employees an hourly rate above the minimum wage rate, Defendants failed to comply with the
3 local wage ordinances. Defendants' uniform pattern of unlawful wage and hour practices
4 manifested, without limitation, applicable to the Class as a whole, as a result of implementing a
5 uniform policy and practice that denied accurate compensation to Plaintiff and the other members
6 of the Class as to minimum wage pay.

7 46. In California, employees must be paid at least the then applicable state minimum
8 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
9 paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Additionally, pursuant
10 to California Labor Code § 204, other applicable laws and regulations, and public policy, an
11 employer must timely pay its employees for all hours worked. Defendants failed to do so.

12 47. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:
13 "The minimum wage for employees fixed by the commission is the minimum wage to be paid to
14 employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable
15 minimum wage rate fixed by the commission for work during the relevant period is found in the
16 Wage Orders.

17 48. The minimum wage provisions of California Labor Code are enforceable by private
18 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
19 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
20 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
21 balance of the full amount of this minimum wage or overtime compensation, including interest
22 thereon, reasonable attorney's fees and costs of suit."

23 49. 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. Also,
25 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
26 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
27 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
28 the absence of a contractually agreed upon one.

1 50. In committing these violations of the California Labor Code, Defendants
2 inaccurately recorded, or required Plaintiff and the Class members to input times that did not reflect
3 their actual hours worked, miscalculated hours or rates or otherwise underpaid the actual time
4 worked by Plaintiff and other members of the Class, including by requiring off the clock work, as
5 addressed in detail above. Defendants acted in an illegal attempt to avoid the payment of all earned
6 wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
7 Commission requirements and other applicable laws and regulations. As a result of these violations,
8 Defendants also failed to timely pay all wages earned in accordance with California Labor Code §
9 1194.

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

14 52. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
15 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial failure
16 to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each
17 employee minimum wages.

18 53. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are further
19 entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest
20 thereon.

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

24 55. Plaintiff and the Class members are entitled to recover the unpaid minimum wages
25 (including double minimum wages) and local wage ordinance wages and liquidated damages in an
26 amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s
27 fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members
28 of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,

1 as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the
2 California Labor Code and/or other applicable statutes. To the extent minimum wage compensation
3 is determined to be owed to the Class members who have terminated their employment, Defendants'
4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be
5 entitled to waiting time penalties under California Labor Code § 203, which penalties are sought
6 herein on behalf of these Class members. Defendants' failure to timely pay all wages owed also
7 violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in
8 the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful,
9 intentional and not in good faith. Further, Plaintiff and other Class members are entitled to seek and
10 recover statutory costs.

11 **SECOND CAUSE OF ACTION**

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

13 **(Against All Defendants)**

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

16 57. California Labor Code § 1194 provides that "any employee receiving less than the
17 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
18 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
19 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
20 may be maintained directly against the employer in an employee's name without first filing a claim
21 with the Division of Labor Standards and Enforcement.

22 58. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
23 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
24 Industrial Welfare Commission) by failing to pay Employees: (a) time and one-half their regular
25 hourly rates for hours worked in excess of eight (8) hours in a workday or in excess of forty (40)
26 hours in any workweek or for the first eight (8) hours worked on the seventh day of work in any one
27 workweek; or (b) twice their regular rate of pay for hours worked in excess of twelve (12) hours in
28 any one (1) day or for hours worked in excess of eight (8) hours on any seventh day of work in a

1 workweek.

2 59. Defendants had a consistent policy of not paying Employees wages for all hours
3 worked at their required regular, overtime, and double-time rates, including by requiring off the
4 clock work, as addressed above, by under-reporting actual hours worked, and by requiring
5 Employees to do so as well.

6 60. Defendants, and each of them, have intentionally and improperly caused Plaintiff and
7 Class members to work off the clock to avoid paying them all earned and owed straight time and
8 overtime wages and other benefits, in violation of the California Labor Code, the California Code
9 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
10 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
11 and other similarly situated non-exempt employees to work through meal periods or remain under
12 Defendants' control when they were required to be clocked out or to otherwise work off the clock.
13 Therefore, Employees were not properly compensated, nor were they paid overtime rates for hours
14 worked in excess of eight hours in a given day, and/or forty hours in a given week. Based on
15 information and belief, Defendants did not make available to Employees a reasonable protocol for
16 correcting time records when Employees worked overtime hours or to fix incorrect time entries or
17 those that Defendants unlawfully under-recorded to the Employee's detriment. Defendants have
18 also violated these provisions by requiring Plaintiff and other similarly situated Class members to
19 work through meal periods when they were required to be clocked out or to otherwise work off the
20 clock to complete their daily job duties.

21 61. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
22 regular wages owed and overtime compensation for all hours worked, as required by California
23 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
24 IWC Wage Order, and is therefore unlawful. Defendants also failed to correctly calculate the
25 regular rate used to calculate and pay overtime, and meal and rest premiums, as addressed above.

26 62. Additionally, Labor Code § 558(a) provides "any employer or other person acting
27 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil

1 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
2 pay period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid in addition to an amount
5 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
6 to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in this
7 section are in addition to any other civil or criminal penalty provided by law.” Defendants have
8 violated provisions of the Labor Code regulating hours and days of work as well as the IWC Wage
9 Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor Code §
10 558.

11 63. Furthermore, on information and belief, Defendants did not pay Plaintiffs and
12 Employees the correct overtime rate for the recorded overtime hours that they generated. In
13 addition to an hourly wage, Defendants paid Plaintiffs and Employees nondiscretionary
14 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
15 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
16 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
17 rate of pay for purposes of calculating the overtime wage rate.

18 64. Therefore, during times when Plaintiffs and Employees worked overtime and
19 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
20 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

27 66. Employees have been damaged by these violations of California Labor Code §§ 204
28 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under Labor

1 Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less than \$100
2 for causing Employees “to work for longer hours than those fixed, or under conditions of labor
3 prohibited by an order of the commission” or if the employer pays “a wage less than the minimum
4 fixed by an order of the commission” or “violates...any provision of this chapter or any order or
5 ruling of the commission.”

6 67. Consequently, pursuant to the California Labor Code, including Labor Code §§ 204,
7 510, 558, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders, including
8 paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full amount of
9 all their unpaid wages and overtime compensation for all their hours worked, with interest, plus
10 their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties
11 against Defendants, and each of them, and any additional sums as provided by the Labor Code
12 and/or other statutes.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY VACATION WAGES UNDER LABOR CODE § 227.3**

15 **(Against All Defendants)**

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

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

22 70. However, Defendants implemented a common policy and practice of failing to pay
23 Plaintiff and Employees for all accrued vacation wages upon separation of employment, in violation
24 of Labor Code 227. Additionally, Defendants paid nondiscretionary commissions, incentive pay,
25 and/or nondiscretionary bonuses to Employees but Defendants failed to include these forms of
26 remuneration in the regular rate of pay upon which vacation wages were calculated and paid

27 71. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant to
28 Labor Code § 227.3.

1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

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

10 74. Defendants paid nondiscretionary commissions, incentive pay, and/or
11 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
12 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
13 calculating the amount of paid sick time due when sick time is used according to the requirements
14 set forth in California Labor Code § 246(1), Defendants paid sick leave to Employees at a lower
15 rate, in violation of the law.

16 75. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
17 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

18 **FIFTH CAUSE OF ACTION**

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

20 **(Against All Defendants)**

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

23 77. Employees regularly worked shifts greater than five (5) hours and in some instances,
24 greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
25 Wage Order, an employer may not employ someone for a shift of more than five (5) hours without
26 providing him or her with a meal period of not less than thirty (30) minutes or for a shift of more
27 than ten (10) hours without providing him or her with a second meal period of not less than thirty
28 (30) minutes.

1 78. Defendants failed to provide Employees with meal periods as required under the
2 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
3 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
4 provided them after Employees worked beyond the fifth hour of their shifts or Employees otherwise
5 had them shortened and interrupted by work demands and requirements to perform off the clock
6 work and remain under Defendants' control. Furthermore, upon information and belief, on the
7 occasions when Employees worked more than ten (10) hours in a given shift, they did so without
8 receiving a second uninterrupted thirty (30) minute meal period as required by law.

9 79. Defendants thus failed to provide Plaintiff and the Class members with meal periods
10 as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order, including by
11 not providing them with the opportunity to take meal breaks, by providing them late or for less than
12 thirty (30) minutes, or by requiring them to perform work during breaks.

13 80. Moreover, Defendants failed to compensate Employees for each meal period not
14 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and 20
15 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee
16 a meal period in accordance with this section, the employer shall pay the employee one (1) hour of
17 pay at the employee's regular rate of compensation for each workday that the meal period is not
18 provided. Additionally, as detailed above, when Defendants did pay meal period premiums, they
19 did so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
20 or by otherwise incorrectly calculating the regular rate.

21 81. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
22 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal to
23 one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
24 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties
25 against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes
26 and applicable IWC Wage Order paragraphs.

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1 **SIXTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 83. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide
7 that employers must authorize and permit all employees to take rest periods at the rate of ten (10)
8 minutes net rest time per four (4) work hours.

9 84. Employees consistently worked consecutive four (4) hour shifts and were generally
10 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit
11 them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage
12 Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for each
13 consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks
14 of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were often
15 required to work or to otherwise remain under Defendants' control during rest periods, including by
16 responding to work demands or walking to/from break areas, and had breaks provided untimely as
17 a result of the above described off the clock work.

18 85. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders
19 provide that if an employer fails to provide an employee rest period in accordance with this section,
20 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided. Defendants failed to do so.

22 86. Defendants, and each of them, have therefore intentionally and improperly denied
23 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
24 paragraph 12 of the applicable IWC Wage Orders.

25 87. Defendants failed to authorize and permit Plaintiff and the Class members to take
26 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
27 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
28 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12

1 and 20 of the applicable IWC Wage Orders. Additionally, as detailed above, when Defendants did
2 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
3 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

4 88. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the
5 applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1)
6 hour of wages at their effective hourly rates of pay for each day worked without the required rest
7 breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against
8 Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

9 **SEVENTH CAUSE OF ACTION**
10 **VIOLATION OF LABOR CODE § 226(a)**
11 **(Against All Defendants)**

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

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

21 91. Defendants failed to provide Plaintiff and the similarly situated Employee Class
22 members with accurate itemized wage statements in writing, as required by the Labor Code and
23 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
24 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
25 including for all overtime and double time hours worked, for deficient meal periods and rest breaks,
26 all of which Defendants knew or reasonably should have known were owed to the Employees, as
27 alleged above. Additionally, Defendants failed in their affirmative obligation to keep accurate
28 records of the correct overtime wages based on proper regular rate calculations that included

1 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total
2 amount of compensation of their Employees. Thus, the wage statements provided to Employees
3 were confusing and required Employees to engage in discovery and refer to outside sources to verify
4 whether their pay was correct and potentially resulting in a miscalculation by the Employees.

5 92. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff
6 and the Class members, upon each payment of wages, itemized statements accurately showing: (1)
7 gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
8 earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages
9 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
10 employee and only the last four digits of his or her social security number or an employee
11 identification number other than a social security number, (8) the name and address of the legal
12 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code
14 § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory requirements.
15 Defendants knowingly and intentionally failed to provide Plaintiff and the Class members with such
16 timely and accurate wage and hour statements.

17 93. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
18 and intentional failure to provide them with the wage and hour statements as required by law and
19 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
20 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
21 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
22 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the wage
23 statement alone one or more of the following: (i) The amount of the gross wages or net wages paid
24 to the employee during the pay period or any of the other information required to be provided on
25 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a),
26 (ii) Which deductions the employer made from gross wages to determine the net wages paid to the
27 employee during the pay period, (iii) The name and address of the employer and, (iv) The name of
28 the employee and only the last four digits of his or her social security number or an employee

1 identification number other than a social security number. For purposes of Labor Code § 226(e)
2 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
3 able to readily ascertain the information without reference to other documents or information.

4 94. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
5 are required “to pay each employee, on the established payday for the period involved, not less than
6 the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §
7 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may
9 therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of
10 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
11 Wage Orders.

12 95. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code §
13 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
14 Class suffered injuries, including among other things confusion over whether they received all
15 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
16 them to make mathematical computations to analyze whether the wages paid in fact compensated
17 them correctly for all hours worked.

18 96. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
19 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
20 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
21 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
22 penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled to an award
23 of costs and reasonable attorneys’ fees.

24 **EIGHTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 203**
26 **(Against All Defendants)**

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

1 98. Plaintiff and numerous Class members are no longer employed by Defendants; they
2 either quit Defendants' employ or were fired therefrom.

3 99. 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.

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

7 101. Defendants failed to pay Plaintiff and the Class members without abatement, all
8 wages as defined by applicable California law. Among other things, these Employees were not paid
9 all regular and overtime wages, including by Defendants failing to pay for all hours worked or
10 requiring off the clock work or by unlawfully under-recording time entries to the detriment of
11 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
12 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
13 required time was willful within the meaning of Labor Code § 203.

14 102. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
15 are required "to pay each employee, on the established payday for the period involved, not less than
16 the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor Code §
17 1198, "[t]he employment of any employee for longer hours than those fixed by the order or under
18 conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members may
19 therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph 4(B) of
20 the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC
21 Wage Orders. Additionally, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
22 are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than
23 those fixed, or under conditions of labor prohibited by an order of the commission" or if the
24 employer pays "a wage less than the minimum fixed by an order of the commission" or
25 "violates...any provision of this chapter or any order or ruling of the commission."

26 103. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
27 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of the
28 IWC Wage Orders as addressed above, including the requirement that an employee's wages shall

1 continue until paid for up to thirty (30) days from the date they were due.

2 **NINTH CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

7 105. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
8 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
9 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful
10 to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public
11 interest within the meaning of Code of Civil Procedure § 1021.5.

12 106. Plaintiff is a “person” within the meaning of Business & Professions Code
13 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
14 relief, restitution, and other appropriate equitable relief.

15 107. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
16 practices. By the conduct alleged herein, Defendants’ practices were deceptive and fraudulent in
17 that Defendants’ policy and practice failed to provide the required amount of compensation for
18 missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for
19 all hours worked, due to systematic business practices as alleged herein that cannot be justified,
20 pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements
21 in violation of California Business and Professions Code §§ 17200, *et seq.*, and for which this Court
22 should issue injunctive and equitable relief, pursuant to California Business & Professions Code §
23 17203, including restitution of wages wrongfully withheld.

24 108. Wage-and-hour laws express fundamental public policies. Paying employees their
25 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public
26 policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously
27 to enforce minimum labor standards, to ensure that employees are not required or permitted to work
28 under substandard and unlawful conditions, and to protect law-abiding employers and their

1 employees from competitors who lower costs to themselves by failing to comply with minimum
2 labor standards.

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

9 110. Defendants' conduct, as alleged above, constitutes unfair competition in violation of
10 the Business & Professions Code § 17200 *et seq.*

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

15 112. By the conduct alleged herein, Defendants have engaged and continue to engage in a
16 business practice which violates California and federal law, including but not limited to, the
17 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
18 Code including Sections 204, 221, 226, 226.7, 227.3, 510, 512, 1182.12, 1194, 1194.2, 1197, AND
19 1198 for which this Court should issue declaratory and other equitable relief pursuant to California
20 Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held
21 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

24 114. Unless restrained by this Court Defendants will continue to engage in such unlawful
25 conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such
26 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use
27 by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the
28 Business & Professions Code, including but not limited to the disgorgement of such profits as may

1 be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

2 **TENTH CAUSE OF ACTION**

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

4 **(Against All Defendants)**

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

7 102. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
8 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
9 alleged violators, Defendants.

10 103. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
11 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the penalty
12 provisions, without limitation, based on the following California Labor Code sections: 201, 202,
13 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174, 1174.5,
14 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*

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

17 105. Employees also seek any and all penalties and remedies set forth in Labor Code §
18 558, which states:

19 (a) Any employer or other person acting on behalf of an employer who violates,
20 or causes to be violated, a section of this chapter or any provision regulating hours
21 and days of work in any order of the Industrial Welfare Commission shall be subject
22 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
23 underpaid employee for each pay period for which the employee was underpaid in
24 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.

25 (b) If upon inspection or investigation the Labor Commissioner determines that
26 a person had paid or caused to be paid a wage for overtime work in violation of any
27 provision of this chapter, or any provision regulating hours and days of work in any
28 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 shall be the same as those set out in Section 1197.1.

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

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

9 107. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
10 LWDA and Defendants postmarked on February 27, 2024. The LWDA has not provided notice of
11 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
12 letters.

13 **RELIEF REQUESTED**

14 WHEREFORE, Plaintiff prays for the following relief:

- 15 1. For an order certifying this action as a class action;
- 16 2. For compensatory damages in the amount of the unpaid minimum wages for work
17 performed by Employees and unpaid overtime compensation from at least four (4) years prior to the
18 filing of this action, as may be proven;
- 19 3. For liquidated damages in the amount equal to the unpaid minimum wage and interest
20 thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 21 4. For compensatory damages in the amount of all unpaid wages, including overtime
22 and double-time pay, as may be proven;
- 23 5. For penalties pursuant to Labor Code § 227.3, as may be proven;
- 24 6. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
- 25 7. For compensatory damages in the amount of the hourly wage made by Employees
26 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
27 years prior to the filing of this action, as may be proven;
- 28 8. For compensatory damages in the amount of the hourly wage made by Employees

for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;

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

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

11. 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;

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

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

14. 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;

15. For other wages and penalties under the Labor Code as may be proven;

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

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

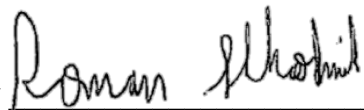
18. For an award providing for the payment of the costs of this suit;

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 2, 2024

D.LAW, INC.

By 

Emil Davtyan

David Yeremian

Roman Shkodnik

Robert Payaslyan

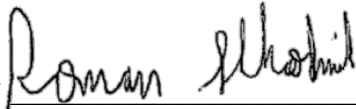
Attorneys for Plaintiff and the putative class

DEMAND FOR JURY TRIAL

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

DATED: May 2, 2024

D.LAW, INC.

By 

Emil Davtyan

David Yeremian

Roman Shkodnik

Robert Payaslyan

Attorneys for Plaintiff and the putative class

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

Megan Childress
mchildress@ohaganmeyer.com
Anne Osborn
aosborn@ohaganmeyer.com
O'HAGAN MEYER, LLP
555 S. Hope Street, Suite 2400
Los Angeles, CA 90071

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

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

☐ **(BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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

Executed on May 2, 2024, at Glendale, California.

Natalia Bermudes
Natalia Bermudes