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on behalf of himself and others similarly situated

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

MANUEL RINCON, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

UPBAY LLC dba UPBAY EXPRESS, a
California limited liability company; UPBAY
EXPRESS LLC, an entity of unknown form;
UPBAY, an entity of unknown form; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CV000182

CLASS ACTION

Assigned for All Purposes To:
Hon. Cynthia Smith
Dept.: A

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages;
6. Failure to Comply with Labor Code §§ 245 *et*
seq. and 246;
7. Reimbursement of Necessary Business
Expenditures Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5;
10. Failure to Produce Requested
Employment Records Under Labor Code
§§ 226 and 1198.5;
11. Penalties Pursuant to Labor Code § 203; and
12. Violation of Business & Professions Code §
17200 *et seq.*; and
13. Penalties Pursuant to Labor Code § 2699, *et*
seq.

DEMAND FOR JURY TRIAL

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

4 INTRODUCTION

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

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

24 3. Defendants failed to provide Plaintiff and Employees with lawful meal and rest
25 periods, as employees were not provided with the opportunity to take timely, uninterrupted, and
26 duty-free meal and rest periods as required by the Labor Code. Defendants also failed to pay all
27 wages due and owing for on-call time. Defendants thus failed to pay Plaintiff and the Class
28 members for all hours worked, and provided them with inaccurate wage statements that prevented

1 Plaintiff and the Class from learning of these unlawful pay practices.

2 **THE PARTIES**

3 **A. The Plaintiff**

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

7 **B. The Defendants**

8 5. Defendant UPBAY LLC dba UPBAY EXPRESS is a California limited liability
9 company, with its principle executive offices in Vallejo, California and has been listed on
10 Plaintiff's personnel file during the relevant time period. UPBAY LLC dba UPBAY EXPRESS
11 lists a California address with the California Secretary of State, and employs Plaintiff and the
12 Class members in Napa County, including at Defendants' offices and facilities in Napa,
13 California, and throughout California and conducts business throughout California.

14 6. Defendant UPBAY EXPRESS LLC, is an entity of unknown form and has been
15 listed as the employer on Plaintiff's wage statements during the relevant time period. UPBAY
16 EXPRESS LLC does not list a California address with the California Secretary of State, but upon
17 information and belief, employs and employs Plaintiff and Employees in Napa County, including
18 at Defendants' offices and facilities in Napa, California and throughout California and conducts
19 business throughout California.

20 7. Defendant UPBAY, is an entity of unknown form and has been listed as the
21 employer on Plaintiff's personnel file during the relevant time period. UPBAY does not list a
22 California address with the California Secretary of State, but upon information and belief, employs
23 Plaintiff and Employees in Napa County, including at Defendants' offices and facilities in Napa,
24 California and throughout California and conducts business throughout California.

25 8. The true names and capacities, whether individual, corporate, associate, or
26 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
27 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
28 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants

1 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
2 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
3 this Complaint to reflect the true names and capacities of the Defendants designated herein as
4 Does 1 through 50 when their identities become known.

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

14 **JURISDICTION AND VENUE**

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

23 **FACTUAL BACKGROUND**

24 11. The Employees who comprise the Class and Collective, including Plaintiff, are
25 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
26 Employees who work in nonexempt positions at the direction of Defendants in the State of
27 California. Plaintiff and the Class members were either not paid by Defendants for all hours
28 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,

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

13 12. During the course of Plaintiff and the Class members' employment with
14 Defendants, they were not paid all wages they were owed, including for all work performed and
15 for all overtime hours worked to keep labor budgets low. Plaintiff, and upon information and
16 belief the other Class members, were required to work long hours, usually 10-12 hours per work
17 shift. Yet Defendants systematically failed to pay them for all their hours worked. Plaintiff was
18 scheduled to work at least 4 days a week, and 10 hours per day under an alternative workweek
19 schedule. Plaintiff contends that Defendants failed to pay him at the required overtime rate for all
20 hours over eight in a shift, or over forty in a week, which also impacted when he should have been
21 paid at the double time rate and resulted in underpayment of double time for those hours over
22 twelve worked in a shift. Plaintiff contends there was not an enforceable alternative work week
23 election conducted for her facility, or if it was, it was improperly conducted and/or reported to the
24 DIR's Alternative Workweek Elections Database. To the extent Plaintiff's facility and any other
25 facilities in California were operating under a similarly invalid or ineffectual alternative workweek
26 election, Plaintiff and those similarly situated Class members were not paid at least two hours of
27 overtime premium wages on every work shift for the hours between their eighth and tenth worked.

28 13. Defendants also failed to pay Class Members all wages due and owing because

1 Defendants failed to pay for on-call or standby time. Specifically, Defendants would contact
2 Plaintiff and inform him that he was needed at work. Plaintiff then had to report to work and was
3 not paid on-call or standby pay. Upon information and belief, Class Members were also required
4 to be on-call and were not compensated for on-call or standby pay.

5 14. As a matter of uniform Company policy, Plaintiff and the Class members were not
6 paid regular wages and overtime. As a result, Plaintiff and the Class members worked shifts over
7 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
8 appropriate overtime rate for all such hours, by operating under invalid or unenforceable
9 alternative work week agreements leading to at least two hours of unpaid overtime premium
10 wages per shift. Plaintiff and the Class members were also required to work during their meal and
11 rest breaks and were not compensated by Defendants in violation of the California Labor Code.
12 As a result, Plaintiff and the Class members worked substantial overtime hours during their
13 employment with Defendants for which they were not compensated, in violation of the California
14 Labor Code, applicable IWC Wage Orders.

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

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

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

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

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

27 19. Therefore, from at least four (4) years prior to the filing of this lawsuit and
28 continuing to the present, Defendants had a consistent policy or practice of failing to pay

1 Employees for all hours worked and failing to pay minimum wage for all time worked as required
2 by California Law.

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

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

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

22 23. Additionally, from at least four (4) years prior to the filing of this lawsuit, and
23 continuing to the present, Defendants have consistently failed to provide Employees with timely,
24 accurate, and itemized wage statements, in writing showing the correct rate of pay and total hours
25 worked, as required by California wage-and-hour laws. The wage statements provided to
26 Employees were confusing as failed to include the above requirements enumerated above.
27 Employees’ wage statements did not include: the total hours worked in violation of Labor Code §
28 226(a)(2), failed to accurately set forth the name of the legal entity that is the employer in

1 violation of 226(a)(8), and failed to accurately set forth all applicable hourly rates in effect during
2 the pay period and the corresponding number of hours worked at each such rate in violation of
3 Labor Code § 226 (a)(9). The wage statements provided to Employees were confusing and
4 required Employees to engage in discovery and refer to outside sources to verify whether their pay
5 was correct and potentially resulting in a miscalculation by the Employees. Moreover, the wage
6 statements given to Employees by Defendants failed to accurately account for wages, overtime, all
7 of which Defendants knew or reasonably should have known were owed to Employees, as alleged
8 hereinabove.

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

12 25. From at least four (4) years prior to the filing of this lawsuit and continuing to the
13 present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the
14 performance of their job duties for Defendants including, the cost of cellphone usage, which were
15 necessary to perform their duties under Defendants' employ in violation of Labor Code § 2802.

16 26. Additionally, from at least four (4) years prior to filing this lawsuit and continuing
17 to the present, Defendants have had a consistent policy of denying Employees the right to inspect
18 and receive all of their payroll records, timecards, and personnel records.

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

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

26 29. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
27 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
28 enjoyed from their violations of Labor Code.

1 **CLASS ALLEGATIONS**

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

6 31. Further, Plaintiff seeks to represent the following Subclasses composed of and
7 defined as follows:

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

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

13 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
14 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
15 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

16 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
17 Defendants' policy and/or practice of failing to authorize and permit Employees to take
18 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
19 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

20 e. Subclass 5. Vacation Wages Subclass. All Class members who were not
21 compensated at the Employee's regular rate of pay for their vacation wages.

22 f. Subclass 6. Sick Pay Subclass. All Class members who were not compensated at
23 the Employee's regular rate of pay for their sick pay wages.

24 g. Subclass 7. Failure to Reimburse for Necessary Business Expenditures Subclass.
25 All Class members who were subject to Defendants' failure to reimburse for expenses necessarily
26 incurred in the performance of Employees job duties for Defendants.

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

1 i. Subclass 9. Payroll Records Subclass. All Class members who were subject to
2 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
3 by California wage-and-hour laws.

4 j. Subclass 10. Failure to Produce Requested Employment Records Subclass. All
5 Class members who, within the applicable limitations period, were denied the right to inspect and
6 receive all of their payroll records, timecards, and personnel records.

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

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

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

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

20 **A. Numerosity**

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

26 35. Accounting for employee turnover during the relevant time period increases this
27 number substantially. Plaintiff alleges that Defendants' employment records will provide
28 information as to the number and location of all class members.

B. Commonality

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

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code § 226.7, and the applicable IWC Wage Orders, by failing to provide Employees with requisite rest breaks or premium pay in lieu thereof;
- f. Whether Defendants failed to pay Employees vacation wages as required under Labor Code § 227.3;
- g. Whether Defendants failed to pay Employees sick pay as required under Labor Code § 245;
- h. Whether Defendants failed to reimburse Employees for necessary business expenses;
- i. Whether Defendants violated Labor Code § 226(a);
- j. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- k. Whether Defendants violated Labor Code §§ 226 and 1198;
- l. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
- n. Whether Employees are entitled to equitable relief pursuant to Business and Professions Code § 17200 *et seq.*; and

1 o. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq.*

2 **C. Typicality**

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

7 **D. Adequacy of Representation**

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

11 **E. Superiority of Class Action**

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

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

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

22 **(Against All Defendants)**

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

25 42. Defendants failed to pay Employees minimum wages for all hours worked.
26 Defendants had a consistent policy and/or practice of failing to pay Employees minimum wages
27 for all hours worked. Specifically, Defendants failed to compensate for all hours worked and at
28 the applicable hourly rates, including when operating under alternative workweek agreements.

1 Employees were also required to work during meal breaks due to Defendants policy requiring
2 Employees to remain on-call and keep their work phones on during meal breaks. Defendants'
3 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
4 the Class as a whole, as a result of implementing a uniform policy and practice that denied
5 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

6 43. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
7 states:

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

10 44. The applicable minimum wages fixed by the commission for work during the
11 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
12 therefore entitled to double the minimum wage during the relevant period.

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

15 Notwithstanding any agreement to work for a lesser wage, any
16 employee receiving less than the legal minimum wage or the legal
17 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 compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

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

21 47. California Labor Code § 1194.2 also provides for the following remedies:

22 In any action under Section 1194 . . . to recover wages because of
23 the payment of a wage less than the minimum wages fixed by an
24 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

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

28 49. Wherefore, Employees are entitled to recover the unpaid minimum wages
(including double minimum wages), liquidated damages in an amount equal to the minimum

1 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
2 to California Labor Code § 1194(a).

3 **SECOND CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

8 51. By their conduct, as set forth herein, Defendants violated California Labor Code §
9 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
10 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
11 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
12 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
13 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
14 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
15 paying Employees wages for all hours worked. Defendants had a consistent policy of not paying
16 Employees wages for all hours worked, as addressed above, by operating under invalid or
17 unenforceable alternative work week agreements leading to at least two hours of unpaid overtime
18 premium wages per shift.

19 52. Furthermore, on information and belief, Defendants did not pay Plaintiff and
20 Employees the correct overtime rate for the recorded overtime hours that they generated. In
21 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary
22 commissions, incentive pay, shift differentials, and/or nondiscretionary bonuses. However, upon
23 information and belief, Defendants failed to incorporate all remunerations, including
24 nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary
25 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime
26 wage rate.

27 53. Therefore, during times when Plaintiff and Employees worked overtime and
28 received nondiscretionary commissions, incentive pay, shift differentials, and/or nondiscretionary

1 bonuses, Defendants failed to pay all overtime wages by paying a lower overtime rate than
2 required.

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

9 55. Employees have been damaged by these violations of California Labor Code §§
10 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

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

15 **THIRD CAUSE OF ACTION**

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

17 **(Against All Defendants)**

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

20 58. Employees regularly worked shifts greater than five (5) hours and greater than ten
21 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
22 more than five (5) hours without providing him or her with a meal period of not less than thirty
23 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
24 meal period of not less than thirty (30) minutes.

25 59. Defendants failed to provide Employees with meal periods as required under the
26 Labor Code. Employees were consistently required to work through their meal periods which they
27 were consistently denied. Employees were also required to take meal periods after working well
28 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more

1 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
2 period as required by law. What meal periods were provided were also not duty-free due to
3 Defendants' policy and practice requiring Employees to remain on-call and keep their work
4 phones on during meal periods. In addition, Employees were not permitted to leave their delivery
5 vans during meal breaks.

6 60. Moreover, Defendants failed to compensate Employees for each meal period not
7 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
8 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
9 employee a meal period in accordance with this section, the employer shall pay the employee one
10 hour of pay at the employee's regular rate of compensation for each workday that the meal period
11 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
12 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
13 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
14 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
15 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

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

19 **FOURTH CAUSE OF ACTION**

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

21 **(Against All Defendants)**

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

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

27 64. Defendants failed to provide Employees with timely rest breaks of not less than ten
28 (10) minutes for each consecutive four (4) hour shift. When Plaintiff attempted to take rest breaks,

1 including restroom breaks, Defendants would contact him and tell him to hurry up.

2 65. Moreover, Defendants failed to compensate Employees for each rest break not
3 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
4 Wage Orders, which provide that, if an employer fails to provide an employee a rest break in
5 accordance with this section, the employer shall pay the employee one hour of pay at the
6 employee's regular rate of compensation for each workday that the rest break is not provided.
7 Defendants failed to compensate the Employees in the Class for each rest break not provided or
8 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
9 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
10 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
11 or by otherwise incorrectly calculating the regular rate.

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

15 **FIFTH CAUSE OF ACTION**
16 **FAILURE TO PAY VACATION WAGES**
17 **(Against All Defendants)**

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

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

24 69. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
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 70. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
28 Code § 227.3.

1 **SIXTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

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

6 72. 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 73. Defendants paid nondiscretionary commissions, incentive pay, shift differentials,
11 and/or 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 74. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
17 Code §§ 245 *et seq.* and 246.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES IN**

20 **VIOLATION OF LABOR CODE § 2802**

21 **(Against All Defendants)**

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

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

27 77. Employees incurred necessary expenditures in the performance of their job duties
28 for Defendants, namely the cost of cell phone usage, which were necessary to perform their duties

1 under Defendants' employ. From four (4) years prior to the original filing of this lawsuit and
2 continuing to the present, Defendants consistently failed to reimburse Employees for these
3 necessarily incurred business expenses.

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

7 **EIGHTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE § 226(a)**
9 **(Against All Defendants)**

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

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

19 81. Defendants failed to provide Employees with accurate itemized wage statements in
20 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
21 Defendants, failed to include the above requirements enumerated above. Employees' wage
22 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2), failed to
23 accurately set forth the name of the legal entity that is the employer in violation of 226(a)(8), and
24 failed to accurately set forth all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each such rate in violation of Labor Code § 226(a)(9).
26 Moreover, the wage statements provided to Employees name an entity that is not registered with
27 the California Secretary of State's Office despite the fact all businesses that wish to conduct
28 business in California need to register with the California Secretary of State's Office. Additionally,

1 Defendants failed in their affirmative obligation to keep accurate records of the correct overtime
2 wages based on proper regular rate calculations that included nondiscretionary commissions,
3 incentive pay, shift differentials, and/or nondiscretionary bonuses earned, and the total amount of
4 compensation of their Employees. The wage statements provided to Employees were confusing
5 and required Employees to engage in discovery and refer to outside sources to verify whether their
6 pay was correct and potentially resulting in a miscalculation by the Employees. Moreover, the
7 wage statements given to Employees by Defendants failed to accurately account for wages,
8 overtime, all of which Defendants knew or reasonably should have known were owed to
9 Employees, as alleged hereinabove.

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

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

20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE §§ 1174**

22 **AND 1174.5**

23 **(Against All Defendants)**

24 84. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
25 full herein.

26 85. California Labor Code § 1174 requires that all employers shall keep accurate time
27 and wage records for all employees. California Labor Code § 1174.5 further requires that any
28 employee suffering injury due to a willful violation of the aforementioned obligations may seek

1 damages, including civil penalties, from the employer.

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

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

8 **TENTH CAUSE OF ACTION**

9 **FAILURE TO PRODUCE REQUESTED EMPLOYMENT RECORDS UNDER LABOR**

10 **CODE §§ 226 and 1198**

11 **(Against All Defendants)**

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

14 89. Pursuant to California Labor Code § 226, current and former employees have the
15 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
16 request to their employer. Under this statute, an employer that receives a request to inspect or
17 receive a copy of records pertaining to a current or former employee must comply with the request
18 as soon as practicable, but no later than twenty-one (21) calendar days from the date of the
19 request.

20 90. Pursuant to California Labor Code § 1998.5(a), every current and former employee,
21 or his or her representative, has the right to inspect and receive a copy of the personnel records
22 that the employer maintains relating to the employee's performance or to any grievance concerning
23 the employee. Under this statute, upon written request from a current or former employee or his or
24 her representative, an employer must make the contents of those personnel records available for
25 inspection or provide a copy of the personnel records to the current or former employee, or his or
26 her representative, not later than thirty (30) calendar days from the date the employer receives the
27 written request, subject to some limited exceptions. Failure to comply with these requests allows
28 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and

1 226(f).

2 91. Plaintiff sent written requests through his counsel to Defendants for their payroll
3 records, timecards, and personnel records. However, Plaintiff has not received all of his requested
4 records as of the date of this Complaint. Specifically, Plaintiff requested a copy of the Employee
5 Handbook referenced in other documents provided by Defendants. Despite numerous requests,
6 Defendants failed to produce the requested document.

7 92. Defendants violated California Labor Code §§ 226 and 1198.5 by failing to timely
8 produce the required records requested by Plaintiff.

9 93. On information and belief, Defendants' failure to provide Plaintiff with all of his
10 requested employment records is not an isolated incident, but was instead consistent with
11 Defendants' policy and practice that applied to Plaintiff and Employees.

12 94. Pursuant to California Labor Code § 1198.5, Plaintiff and Employees are entitled to
13 a penalty of seven hundred fifty dollars (\$750) from Defendants and attorneys' fees and costs.

14 95. Pursuant to California Labor Code § 226, Plaintiff is entitled to a penalty of seven
15 hundred fifty dollars (\$750) from Defendants and attorneys' fees and cost.

16 **ELEVENTH CAUSE OF ACTION**
17 **VIOLATION OF LABOR CODE § 203**
18 **(Against All Defendants)**

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

21 97. Numerous Employees are no longer employed by Defendants; they either quit
22 Defendants' employ or were fired therefrom.

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

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

27 100. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
28 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties

1 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
2 to thirty (30) days from the date they were due.

3 **TWELFTH CAUSE OF ACTION**

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

5 **(Against All Defendants)**

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

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

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

16 104. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
17 business practices.

18 105. Wage-and-hour laws express fundamental public policies. Paying employees their
19 wages and overtime, etc., are fundamental public policies of California. Labor Code § 90.5(a)
20 articulates the public policies of this State vigorously to enforce minimum labor standards, to
21 ensure that employees are not required or permitted to work under substandard and unlawful
22 conditions, and to protect law-abiding employers and their employees from competitors who lower
23 costs to themselves by failing to comply with minimum labor standards.

24 106. Defendants have violated statutes and public policies. Through the conduct alleged
25 in this Complaint, Defendants have acted contrary to these public policies, have violated specific
26 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
27 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
28 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges

1 guaranteed to all employees under the law.

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

4 108. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
5 overtime, etc., either knew or in the exercise of reasonable care should have known that their
6 conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200
7 *et seq.*

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

10 110. Unless restrained by this Court, Defendants will continue to engage in such
11 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
12 should make such orders or judgments, including the appointment of a receiver, as may be
13 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
14 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
15 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
16 have unlawfully failed to pay.

17 **THIRTEENTH CAUSE OF ACTION**

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

19 **(Against All Defendants)**

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

22 112. Plaintiff and Employees are aggrieved employees as defined under Labor Code §
23 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the
24 alleged violators, Defendants.

25 113. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'
26 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the
27 penalty provisions, without limitation, based on the following California Labor Code sections:
28 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 245 *et seq.*, 246, 510, 512, 558, 558.1, 1174,

1 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.* and 2802.

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

4 115. Employees also seek any and all penalties and remedies set forth in Labor Code §
5 558, which states:

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

12 (b) If upon inspection or investigation the Labor Commissioner determines that
13 a person had paid or caused to be paid a wage for overtime work in violation of any
14 provision of this chapter, or any provision regulating hours and days of work in any
15 order of the Industrial Welfare Commission, the Labor Commissioner may issue a
16 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.

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

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

25 117. Plaintiff has exhausted his administrative remedy by sending a certified letter to the
26 LWDA and Defendants postmarked on February 7, 2024. The LWDA has not provided notice of
27 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the
28 letters.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
5. 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 and where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
7. For penalties pursuant to Labor Code § 226.3, as may be proven;
8. For penalties pursuant to Labor Code § 227.3, as may be proven;
9. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
10. 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;
11. For penalties pursuant to Labor Code § 1174.5, as may be proven;
12. For penalties pursuant to Labor Code §§ 226 and 1198.5, 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 penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;
15. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants

1 from four (4) years prior to the original filing of this action, as may be proven;

2 16. For an order enjoining Defendants and their agents, servants, and employees, and
3 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
4 duties adumbrated in this Complaint;

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

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

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

8 20. For an award of attorneys' fees; and

9 21. For such other and further relief as this Court may deem proper and just.

10
11 DATED: April 12, 2024

D.LAW, INC.

12
13 By 

14 Emil Davtyan
15 David Yeremian
16 Roman Shkodnik
17 Emma Geesaman
18 Attorneys for Plaintiff
19 MANUEL RINCON,
20 and the putative class
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28

DEMAND FOR JURY TRIAL

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

DATED: April 12, 2024

D.LAW, INC.

By



Emil Davtyan
David Yeremian
Roman Shkodnik
Emma Geesaman
Attorneys for Plaintiff
MANUEL RINCON,
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.

Emmanuel Andre, Agent for Service
22 Sandy Beach Rd.
Vallejo, CA 94590

22 Sandy Beach Rd.
Vallejo, CA 94590

300 Boone Dr.
Napa, CA 94558

[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 April 12, 2024, at Glendale, California.

Natalia Bermudes
Natalia Bermudes