

FILED
5/2/2024 2:34 PM
Clerk of the Napa Superior Court
By: Lori Walker, Deputy

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

24CV000710

HECTOR FRAGOSA, an individual, and in his
representative capacity on behalf of the State of
California and other Aggrieved Employees,

Case No.

COMPLAINT FOR DAMAGES

Plaintiff,

v.

LEGACY REMOVAL SERVICE, LLC, a
California limited liability company, TOM
SMITH, an individual, and DOES 1-15

DEMAND FOR JURY TRIAL

Defendants.

PLAINTIFF HECTOR FRAGOSA (“PLAINTIFF”), an individual, on behalf of himself and in his representative capacity on behalf of the State of California and other AGGRIEVED EMPLOYEES, defined below, against DEFENDANT LEGACY REMOVAL SERVICE, LLC, a California limited liability company, DEFENDANT TOM SMITH, an individual, and DEFENDANT DOES 1-15 (“Defendant DOES”) (collectively “DEFENDANTS”), alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

I. INTRODUCTION

1. PLAINTIFF brings this action as an individual on behalf of himself and in a representative capacity on behalf of the State of California and pursuant to the Private Attorneys

1 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current
2 and former AGGRIEVED EMPLOYEES of DEFENDANTS for engaging in a pattern and practice
3 of wage and hour violations under the California Labor Code.

4 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
5 decreased their employment-related costs by systematically violating California wage and hour
6 laws.

7 3. DEFENDANTS’ systematic pattern of wage and hour and IWC Wage Order
8 violations toward PLAINTIFF and other AGGRIEVED EMPLOYEES in California include, *inter*
9 *alia*:

- 10 a. Failure to provide rest periods;
- 11 b. Failure to provide meal periods;
- 12 c. Failure to pay minimum wages;
- 13 d. Failure to pay overtime wages;
- 14 e. Failure to reimburse for required business expenses;
- 15 f. Failure to pay wages when due;
- 16 g. Failure to provide accurate itemized wage statements;
- 17 h. Failure to timely pay wages upon termination of employment.

18 4. PLAINTIFF brings the representative action against DEFENDANTS on behalf of
19 himself and all other AGGRIEVED EMPLOYEES of DEFENDANTS in California, seeking all
20 civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

21 5. PLAINTIFF reserves the right to name additional representatives throughout the
22 State of California.

23 **II. PARTIES**

24 6. PLAINTIFF HECTOR FRAGOSA (“PLAINTIFF”), an individual, has resided, and
25 at all times mentioned in this Complaint, continues to reside in Napa County.

26 7. DEFENDANT Legacy Removal Services, LLC, (“Defendant Legacy”) a limited
27 liability company, registered with the California Secretary of State as file No. 201719910061, that
28

1 at all relevant times mentioned herein conducted and continues to conduct substantial and regular
2 business throughout Napa County, California.

3 8. DEFENDANT Tom Smith, (“Defendant Smith”) is, on information and belief, doing
4 business in California as the Chief Executive Officer of Defendant Legacy Removal Services, LLC.
5 Tom Smith is an owner, director, officer, or managing agent of Defendant Legacy Removal
6 Services, LLC.

7 9. Defendant DOES 1-15 (“Defendant DOES”) are persons and/or entities that at all
8 relevant times mentioned herein conducted and continue to conduct substantial and regular business
9 throughout California.

10 10. Each of the fictitiously named DEFENDANTS participated in the acts alleged in this
11 Complaint. The true names and capacities, whether individual, corporate, subsidiary, partnership,
12 associate, or otherwise of DEFENDANT DOES 1 through 15, inclusive, are presently unknown to
13 PLAINTIFF who therefore sues these DEFENDANTS by such fictitious names pursuant to Cal.
14 Civ. Proc. Code. § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true
15 names and capacities of DOES 1 through 15, inclusive, when they are ascertained. PLAINTIFF is
16 informed and believes, and based upon that information and belief alleges, that the DEFENDANTS
17 named in this Complaint, including DOES 1 through 15, inclusive (hereinafter collectively
18 “DEFENDANTS”), are responsible in some manner for one or more of the events and happenings
19 that proximately caused the injuries and damages hereinafter alleged.

20 11. DEFENDANTS own, operate, and/or manage a body transportation service in Napa.

21 12. DEFENDANTS employed PLAINTIFF between approximately July 2023, and
22 January 2024, as a body removal technician paid on an hourly basis.

23 **III. JOINT EMPLOYER AND PAGA**

24 13. PLAINTIFF brings this action on behalf of himself and in his representative capacity
25 on behalf of the State of California and on behalf of all non-exempt individuals paid on an hourly
26 basis who were employed by DEFENDANTS in California who suffered one or more Labor Code
27 violations enumerated in Labor Code §§ 2698 *et seq.* (hereinafter “AGGRIEVED EMPLOYEES”)
28

1 and who worked for DEFENDANTS between February 26, 2023, and the present (“PAGA
2 PERIOD”).

3 14. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code
4 § 2699(c) because he was employed by DEFENDANTS and suffered one or more of the alleged
5 Labor Code violations committed by DEFENDANTS.

6 15. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times
7 were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code
8 and the applicable Industrial Welfare Commission Wage Order.

9 16. The Private Attorney General Act (“PAGA”) permits an aggrieved employee to
10 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
11 2699(a).)

12 17. Section 558 of the California Labor Code provides that “any employer *or other*
13 *person* acting on behalf of an employer who violates, or causes to be violated, a section of this
14 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
15 Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).)

16 18. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person*
17 acting either individually or as an officer, agent, or employee of another person, who pays or causes
18 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
19 or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

20 19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
21 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the
22 employer’s failure to pay appropriate wages to its employees, and, since liability under either 558
23 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
24 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v.*
25 *Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203
26 Cal.App.4th 1112, 1145-1146.

27 20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and
28 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and other

1 AGGRIEVED EMPLOYEES the appropriate wages as complained of herein and proximately
2 caused the complaints, injuries, and damages alleged herein.

3 21. At all relevant times, each DEFENDANT, whether named or fictitious, was the
4 agent, employee, or other person acting on behalf of each other DEFENDANT, and, in participating
5 in the acts alleged in this Complaint, acted within the scope of such agency or employment and
6 ratified the acts of the other.

7 22. Each DEFENDANT, whether named or fictitious, exercised control over
8 PLAINTIFF'S wages, working hours, and/or working conditions.

9 23. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to
10 this action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan, or
11 policy, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

12 **IV. JURISDICTION AND VENUE**

13 24. This Court has jurisdiction over this Action pursuant to the California Code of Civil
14 Procedure, Section 410.10.

15 25. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS and
17 DEFENDANTS (i) currently maintain and at all relevant times-maintained offices and facilities in
18 this County, and (ii) committed the wrongful conduct herein alleged in this County against
19 PLAINTIFF.

20 **V. FACTUAL ALLEGATIONS**

21 **A. Rest Period Violations**

22 26. PLAINTIFF and other AGGRIEVED EMPLOYEES were required to work in excess
23 of four (4) hours without being provided ten (10) minute rest periods as a result of DEFENDANTS'
24 policies and practices.

25 27. PLANITIFF and other AGGRIEVED EMPLOYEES, from time-to-time were
26 required to work in excess of eight (8) hours or more, without being provided a second ten (10)
27 minute rest period for the same reasons.

28 28. Specifically, DEFENDANTS required PLAINTIFF and other AGGRIEVED

1 EMPLOYEES to either postpone or forfeit rest periods as a result of the nature and constraints of
2 the job, including a practice of scheduling appointments consecutively and therefore preventing
3 PLAINTIFF and other AGGRIEVED EMPLOYEES from taking rest periods.

4 29. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with
5 one-hour wages *in lieu* thereof, and as a result, PLAINTIFF and other AGGRIEVED EMPLOYEES
6 were denied their proper rest periods by DEFENDANTS and DEFENDANTS' managers.

7 30. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
8 required to provide rest periods to PLAINTIFF and other AGGRIEVED EMPLOYEES per every
9 four (4) hours worked or major fraction thereof or provide the employee one (1) hour of pay at the
10 employee's regular rate of compensation for each workday the rest period is not provided. During
11 the entirety of PLAINTIFF'S employment and the PAGA Period, DEFENDANTS required
12 PLAINTIFF and other AGGRIEVED EMPLOYEES to work through rest periods without paying
13 them in accordance with Industrial Wage Orders. As a result, PLAINTIFF and other AGGRIEVED
14 EMPLOYEES forfeited their regular wages by working without compensation at the applicable
15 wage and rates. DEFENDANTS had, and may continue to practice, a uniform policy to not pay
16 PLAINTIFF and other AGGRIEVED EMPLOYEES all rest premiums owed.

17 B. Meal Period Violations

18 31. DEFENDANTS required PLANITIFF and other AGGRIEVED EMPLOYEES to
19 work during the meal break during what was supposed to be AGGRIEVED EMPLOYEES' off-duty
20 meal break due to DEFENDANTS' policies and practices.

21 32. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
22 required to provide meal periods of not less than thirty (30) minutes to PLANITIFF and other
23 AGGRIEVED EMPLOYEES for each work period of more than five (5) hours, except when that
24 work period is not more than six (6) and validly waived or provide one (1) hour of pay at the
25 employee's regular rate of compensation.

26 33. From time to time, DEFENDANTS required PLANITIFF and other AGGRIEVED
27 EMPLOYEES to work during the meal periods and/or postpone their meal periods. As a result,
28 PLANITIFF and other AGGRIEVED EMPLOYEES forfeited their meal periods without

1 compensation at the applicable wage and rates. DEFENDANTS had and may continue to practice,
2 a uniform policy to not pay PLAINTIFF and other AGGRIEVED EMPLOYEES meal periods.

3 34. As a result of DEFENDANTS' policies and practices, PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were unable to take thirty (30) minute off-duty meal breaks and were
5 not fully relieved of duty for their meal period.

6 35. The nature of the work performed by PLAINTIFF and other AGGRIEVED
7 EMPLOYEES does not qualify for limited and narrowly construed "on-duty" meal period
8 exception. PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks
9 without additional compensation and in accordance with DEFENDANTS' policies and practices.

10 C. On-Call Time and Minimum Wage and Overtime Violations

11 36. During PLAINTIFF'S employment and the PAGA Period, DEFENDANTS failed to
12 accurately pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all hours worked.

13 37. DEFENDANTS require PLAINTIFF and other AGGRIEVED EMPLOYEES to
14 create their "on-call" schedule but only compensated PLAINTIFF and other AGGRIEVED
15 EMPLOYEES for the time spent working once dispatched.

16 38. During this "on-call" time, DEFENDANTS required PLAINTIFF and other
17 AGGRIEVED EMPLOYEES to remain within a geographic location so that PLAINTIFF and other
18 AGGRIEVED EMPLOYEES would arrive to the dispatched locations within 30 minutes of being
19 dispatched.

20 39. DEFENDANTS instructed PLAINTIFF and other AGGRIEVED EMPLOYEES not
21 to report any on-call time but rather only compensate employees for time spent working once
22 dispatched. DEFENDANTS policy resulted in unpaid minimum and overtime wages owed to
23 PLAINTIFF and other AGGRIEVED EMPLOYEES.

24 40. DEFENDANTS failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES
25 all necessary wages for attending and performing work at DEFENDANTS' direction, request and
26 benefit.

27 41. DEFENDANTS directed and directly benefited from the uncompensated off-the-
28 clock work performed by PLAINTIFF and other AGGRIEVED EMPLOYEES.

1 42. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and other AGGRIEVED EMPLOYEES.

3 43. DEFENDANTS were able to track the amount of time PLAINTIFF and other
4 AGGRIEVED EMPLOYEES spent working however, DEFENDANTS failed to document, track,
5 and pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages earned and owed for all the
6 work they performed, including during on-call time.

7 44. Additionally, DEFENDANTS maintain a practice to classify employees' overtime
8 hours as commission rather than overtime. DEFENDANTS compensate PLAINTIFF and other
9 AGGRIEVED EMPLOYEES at their hourly rate for all overtime hours worked instead of the
10 correct overtime rate.

11 45. PLAINTIFF and other AGGRIEVED EMPLOYEES were non-exempt employees,
12 subject to the requirements of the California Labor Code.

13 46. DEFENDANTS' policies and practices deprived PLAINTIFF and other
14 AGGRIEVED EMPLOYEES of all regular wages and from time to time, overtime wages owed for
15 the off-the-clock work activities, including "on-call" time.

16 47. DEFENDANTS knew or should have known that PLAINTIFF and other
17 AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

18 48. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited wages due
19 them for all hours worked at DEFENDANTS' direction, control and benefit for the time spent while
20 off-the-clock. DEFENDANTS have a uniform policy and practice to not pay PLAINTIFF and other
21 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law.

22 49. Moreover, as a result, DEFENDANTS provided PLAINTIFF and other
23 AGGRIEVED EMPLOYEES with a paystub that failed to comply with Cal. Lab. Code § 226 and
24 did not maintain accurate payroll and timekeeping records.

25 D. Violations for Untimely Payment of Wages

26 50. Pursuant to California Labor Code section 204, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES are entitled to timely payment of wages during their employment.
28 PLAINTIFF and other AGGRIEVED EMPLOYEES, from time to time, did not receive payment of

1 all wages, including, but not limited to, overtime wages, minimum wages, meal period premium
2 wages, and rest period premium wages within permissible time period and on days designated in
3 advance by the employer as regular payday.

4 E. Unreimbursed Business Expenses

5 51. DEFENDANTS required PLAINTIFF and other AGGRIEVED EMPLOYEES to
6 use their personal cell phones for work-related communications. This includes calls and text
7 messages for dispatches, updates, and general work-related communications. DEFENDANTS
8 additionally required PLAINTIFF and other AGGRIEVED EMPLOYEES to create their work
9 schedule using a mobile application on their personal cell phone.

10 52. DEFENDANTS did not provide PLAINTIFF and other AGGRIEVED
11 EMPLOYEES with a designated work phone. PLAINTIFF and other AGGRIEVED EMPLOYEES
12 were neither compensated for the cost of the cellular phone nor the cost of the cell phone plan.

13 53. DEFENDANTS failed to reimburse PLAINTIFF and other AGGRIEVED
14 EMPLOYEES for use of personal devices in the discharge of their work duties.

15 F. Inaccurate Itemized Wage Statements

16 54. California Labor Code Section 226 requires an employer to furnish its employees an
17 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
18 the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
19 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
20 employee and only the last four digits of the employee's social security number or an employee
21 identification number other than a social security number, (8) the name and address of the legal
22 entity that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee.

24 55. During PLAINTIFF'S employment and during the PAGA period, when PLAINTIFF
25 and other AGGRIEVED EMPLOYEES were not paid meal and rest period premiums or were not
26 paid for all hours worked, DEFENDANTS failed to provide PLAINTIFF and other AGGRIEVED
27 EMPLOYEES with complete and accurate wage statements. DEFENDANTS' paystubs failed to
28 show, among other things, the total hours worked and all applicable hourly rates in effect during the

1 pay period and the corresponding amount of time worked at each hourly rate, correct rates of pay
2 for penalty payments or missed meal and rest periods.

3 56. Additionally, when DEFENDANTS compensated PLAINTIFF and other
4 AGGRIEVED EMPLOYEES for overtime, DEFENDANTS identified these hours as
5 “Commission” on employees’ wage statements. DEFENDANTS failed to identify the applicable
6 rate earned as “Commission” on wage statements.

7 57. Additionally, DEFENDANTS did not accurately record all hours worked by
8 PLAINTIFF and other AGGRIEVED EMPLOYEES. For instance, regardless of the actual amount
9 of time worked, DEFENDANTS paid a minimum of two hours worked per dispatch.
10 DEFENDANTS did not separately track this time and instead included this in employees’ regular
11 pay.

12 58. DEFENDANTS routinely failed to keep, maintain, and store accurate payroll records
13 and provide wage statements that comply with Cal. Lab. Code § 226.

14 59. PLAINTIFF and other AGGRIEVED EMPLOYEES suffered damages as a result of
15 DEFENDANTS’ aforementioned violation because they could not promptly and easily determine
16 from the wage statement alone the applicable hourly rate and the corresponding number of hours
17 worked at the applicable hourly rate for this remuneration.

18 60. As a result, DEFENDANTS issued PLAINTIFF and other AGGRIEVED
19 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS’
20 violations are knowing and intentional, and were not isolated or due to an unintentional payroll error
21 due to clerical or inadvertent mistake.

22 **VI. CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 For Failure to Provide Rest Periods
(Cal. Lab. Code §§ 226.7 & 512)
25 (Plaintiff Against Defendant Legacy)

26 61. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
27 every allegation set forth above.

28 62. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require

1 DEFENDANTS to provide employees with all rest periods specified in the applicable Wage Order.
2 These laws and regulations further entitle employees to be paid one additional hour of pay at their
3 regular rate of compensation for each day of denied rest period.

4 63. PLAINTIFF was required to work in excess of four (4) hours without being provided
5 ten (10) minute rest periods. Further and for the same reasons PLAINTIFF was denied his first rest
6 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours,
7 PLAINTIFF was denied a first and second rest period of at least ten (10) minutes for shifts worked
8 of between six (6) and eight (8) hours. PLAINTIFF was also not provided with one-hour wages in
9 lieu thereof.

10 64. As a result of the work schedules and staffing practices by DEFENDANTS,
11 PLAINTIFF was denied his proper rest periods by DEFENDANTS and DEFENDANTS' managers.

12 65. DEFENDANTS violated California Labor Code §§ 226.7 and the applicable IWC
13 Wage Order by failing to compensate PLAINTIFF who was not provided a rest period, in
14 accordance with the applicable Wage Order, one additional hour of compensation at each
15 employee's regular rate of pay for each workday that rest period was not provided.

16 66. As a proximate result of the aforementioned violations, PLAINTIFF has been
17 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
18 penalties, expenses and costs of suit.

19 **SECOND CAUSE OF ACTION**

20 For Failure to Provide Meal Periods

21 (Cal. Lab. Code §§ 226.7 & 512)

(Plaintiff Against Defendant Legacy)

22 67. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
23 every allegation set forth above.

24 68. Labor Code Sections 226.7 and 512 and the Industrial Wage Orders require
25 DEFENDANTS to provide employees with all meal periods specified in the applicable Wage Order.
26 These laws and regulations further entitle employees to be paid one additional hour of pay at their
27 regular rate of compensation for each day of denied meal period.

28 69. DEFENDANT failed to provide all the legally required off-duty meal breaks to

1 PLAINTIFF as required by the applicable Wage Order and Labor Code. The nature of the work
2 performed by PLAINTIFF did not prevent this employee from being relieved of all of his duties for
3 the legally required off-duty meal periods. As a result of DEFENDANTS policies and practices,
4 PLAINTIFF was not fully relieved of duty by DEFENDANT for his meal periods on occasion.

5 70. DEFENDANT further violated California Labor Code §§ 226.7, 512 and the
6 applicable IWC Wage Order by failing to compensate PLAINTIFF who was not provided a meal
7 period, in accordance with the applicable Wage Order, one additional hour of compensation at this
8 employee's regular rate of pay for each workday that a meal period was not provided.

9 71. As a proximate result of the aforementioned violations, PLAINTIFF has been
10 damaged in an amount according to proof at trial, and seek all wages earned and due, interest,
11 penalties, expenses and costs of suit.

12 **THIRD CAUSE OF ACTION**

13 For Failure to Pay Minimum Wages
14 (Cal. Lab. Code § 1194, 1194.2, 1197& 1197.1, 218.5, 218.6)
(Plaintiff Against All Defendants)

15 72. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
16 every allegation set forth above.

17 73. PLAINTIFF brings a claim for DEFENDANTS' willful and intentional violations of
18 California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS'
19 failure to accurately calculate and pay minimum wages to PLAINTIFF.

20 74. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
21 including minimum wage compensation and interest thereon, together with the costs of suit. Cal.
22 Lab. § 1194.2 further establishes an employee's right to liquidated damages in an amount equal to
23 the unpaid minimum wages according to proof at trial.

24 75. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF without
25 regard to the correct amount of time worked. As set forth herein, DEFENDANTS' uniform policy
26 and practice was to unlawfully and intentionally deny payment of wages due to PLAINTIFF for all
27 hours worked and therefore did not receive minimum wage for all hours worked as required by Cal.
28 Lab. Code § 1197.

1 76. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, as a result of implementing a uniform policy and practice that denied accurate
3 compensation to PLAINTIFF in regard to on-call time worked and failure to accurately pay overtime
4 compensation.

5 77. In committing these violations of the California Labor Code, DEFENDANTS failed
6 to calculate the amount of time worked and consequently underpaid the actual time worked by
7 PLAINTIFF. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
8 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
9 requirements and other applicable laws and regulations.

10 78. PLAINTIFF was paid less for time worked than he was entitled to, constituting a
11 failure to pay all earned wages.

12 79. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
13 PLAINTIFF has suffered and will continue to suffer an economic injury including the use and
14 enjoyment of wages and lost interest on such wages in amounts which are presently unknown to
15 him, and which will be ascertained according to proof at trial.

16 80. DEFENDANTS knew or should have known that PLAINTIFF was under-
17 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
18 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform
19 corporate policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme
20 by refusing to pay PLAINTIFF the correct wages for his time worked.

21 81. DEFENDANTS maintained a uniform wage practice of not only paying PLAINTIFF
22 without regard to the correct amount of time worked by PLAINTIFF. DEFENDANTS' uniform
23 policy and practice was to unlawfully and intentionally deny accurate and full payment of wages
24 due to PLAINTIFF.

25 82. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite
27 compensation, DEFENDANTS acted and continue to act intentionally, oppressively, and
28 maliciously toward PLAINTIFF with a conscious disregard for his legal rights, or the consequences

1 to him, and with the intent of depriving him of his property and legal rights, and otherwise causing
2 him injury in order to increase company profits at the expense of this employee.

3 83. PLAINTIFF, therefore, requests recovery of all unpaid wages, according to proof,
4 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
5 in a sum as provided by the California Labor Code and/or other applicable statutes.

6 **FOURTH CAUSE OF ACTION**

7 For Failure to Pay Overtime Compensation
8 (Cal. Lab. Code §§ 558, 510, 1194, 1198)
(Plaintiff Against All DEFENDANTS)

9 84. PLAINTIFF incorporate by reference and reallege as if fully stated herein each and
10 every allegation set forth above.

11 85. Labor Code section 558 provides for a civil penalty to be assessed against any
12 employer or other person acting on behalf of an employer who fails to compensate employees at the
13 statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40
14 hours in any workweek or who fails to compensate employees at the statutory double time rates for
15 any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day
16 of a workweek.

17 86. DEFENDANTS routinely and systematically failed to properly record accurate time
18 records for each employee and routinely and systematically paid all overtime hours worked at
19 employees' regular rate of pay. By failing to properly record hours and undercompensating
20 employees, DEFENDANTS routinely and systematically failed to compensate employees at the
21 statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40
22 hours in any workweek as required by Labor Code section 510 and Section 3 of the applicable Wage
23 Order.

24 87. Specifically, DEFENDANTS failed to track and provide compensation for time
25 spent on-call and reported and compensated all overtime hours worked as "commission". When
26 PLAINTIFF worked in excess of eight (8) hours in a day or forty (40) hours in a week,
27 DEFENDANTS practices deprived PLAINTIFF of overtime wages.
28

1 88. Pursuant to Labor Code section 558, PLAINTIFF is entitled to recover a penalty of
2 \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in
3 excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure
4 to compensate employees at the statutory double time rates for any work in excess of twelve hours
5 in one day in addition to any underpaid wages; and \$100.00 for each subsequent failure to
6 compensate employees at the statutory overtime rate for any work in excess of eight hours in one
7 day or any work in excess of 40 hours in any workweek in addition to any underpaid wages.

8 89. As a proximate result of DEFENDANTS' failure to pay overtime and/or wages as
9 alleged above, PLAINTIFF is entitled to recover from DEFENDANTS penalties pursuant to section
10 558 as may be established according to proof at trial.

11 90. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
12 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code
13 § 1198 further states that the employment of an employee for longer hours than those fixed by the
14 Industrial Welfare Commission is unlawful.

15 91. DEFENDANTS acted in an illegal attempt to avoid the payment of all earned wages,
16 and other benefits in violation of the California Labor Code, the Industrial Welfare Commission
17 requirements and other applicable laws and regulations.

18 92. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
19 the overtime requirements of the law. These exemptions did not apply to PLAINTIFF. Further,
20 PLAINTIFF is not subject to a valid collective bargaining agreement that would preclude the causes
21 of action contained herein this Complaint.

22 93. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF for the true amount of overtime worked, PLAINTIFF has suffered
24 and will continue to suffer an economic injury in amounts which are presently unknown to him, and
25 which will be ascertained according to proof at trial.

26 94. DEFENDANTS knew or should have known that PLAINTIFF was under
27 compensated for his time worked. DEFENDANTS systematically elected, either through intentional
28 malfeasance or gross nonfeasance, to not pay his for their labor as a matter of uniform company

1 policy, practice and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing
2 to pay PLAINTIFF overtime wages for his overtime worked.

3 95. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate PLAINTIFF for all time worked and provide him with the requisite
5 compensation, DEFENDANTS acted and continues to act intentionally, oppressively, and
6 maliciously toward PLAINTIFF with a conscious of and utter disregard for his legal rights, or the
7 consequences to him, and with the despicable intent of depriving him of their property and legal
8 rights, and otherwise causing him injury in order to increase company profits at the expense of this
9 employee.

10 96. Therefore, PLAINTIFF request recovery of overtime wages, according to proof,
11 interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS,
12 in a sum as provided by the California Labor Code and/or other applicable statutes.

13 **FIFTH CAUSE OF ACTION**

14 For Failure to Reimburse Business Expenses
15 (Cal. Lab. Code §§ 2802)
(Plaintiff Against Defendant Legacy)

16 97. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and
17 every allegation set forth above.

18 98. Pursuant to California Labor Code section 2802, DEFENDANTS are required to
19 indemnify PLAINTIFF for the expenses and losses incurred during the performance of his job
20 duties. The purpose of this statute is to prevent employers from passing their operating expenses on
21 to their employees.

22 99. DEFENDANTS required PLAINTIFF to use his personal cell phone in the discharge
23 his work duties. This included being dispatched, communicating updates, and creating his schedule.

24 100. DEFENDANTS did not provide PLAINTIFF with a designated work phone.
25 PLAINTIFF was neither compensated for the cost of the cellular phone nor the cost of the cell phone
26 plan.

27 101. In violation of Labor Code section 2802, DEFENDANTS failed to reimburse
28 PLAINTIFF for necessary business expenditures for use of his personal cell phone.

102. DEFENDANTS sought to pad their own pockets at the expense of their employees, and instead of compensating their employees for the necessary business costs, the employer passed on its costs to its employees.

103. DEFENDANTS intentionally failed to reimburse its employees for the actual expenses incurred and thereby increased its own profits to the detriment of its employees.

104. PLAINTIFF seeks to recover these business expenditures, plus interest thereon, reasonable attorneys' fees, and costs, and statutory penalties as provided by the Labor Code in an amount to be proven.

105. Interest accrues from the date the employee incurred the necessary expenditure or loss.

SIXTH CAUSE OF ACTION

For Failure to Pay Wages
(Cal. Lab. Code § 204, 210)
(Plaintiff Against Defendant Legacy)

106. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and every allegation set forth above.

107. Labor Code Section 204 provides in part provides in part that "all wages, ..., earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."

108. Plaintiff is informed and believes, and thereon alleges that DEFENDANTS failed pay PLAINTIFF all earned wages, including regular and/or overtime and meal and rest premiums, on regularly established paydays.

109. In violation of Labor Code section 204, DEFENDANTS knowingly and willfully refused to perform their obligations to compensate their employees for all wages earned.

110. Pursuant to Labor Code section 210, PLAINTIFF is entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee all of the wages earned, and \$200.00 for each subsequent failure to pay each employee all of the wages earned; in addition, pursuant to section 210, for each subsequent failure to pay in compliance with Labor Code section 204,

1 PLAINTIFF is entitled to recover an additional amount equal to 25% of the unlawfully withheld
2 wages.

3 111. As a direct and proximate result of DEFENDANTS' conduct in violation of Labor
4 Code section 204 as alleged above, DEFENDANTS' employees have suffered, and continue to
5 suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their
6 damage in amounts according to proof at trial.

7 **SEVENTH CAUSE OF ACTION**

8 For Failure to Pay Wages Upon Termination
9 (Cal. Lab. Code § 201, 203)
(Against Defendant Legacy)

10 112. PLAINTIFF incorporates by reference and reallege as if fully stated herein each and
11 every allegation set forth above.

12 113. If an employer willfully fails to pay, without abatement or reduction, in accordance
13 with Sections 201, . . . 202, any wages of an employee who is discharged or who quits, the wages
14 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
15 until an action therefor is commenced; but the wages shall not continue for more than 30 days. (Cal.
16 Lab. Code § 203).

17 114. DEFENDANTS terminated PLAINTIFF in January 2024 and have not tendered
18 payment of wages to this employee who was underpaid for minimum and overtime wages, and/or
19 missed meal and rest breaks, as required by law.

20 115. DEFENDANTS knowingly and willfully violated the laws, regulations and orders
21 governing the wages of PLAINTIFF as described in the causes of action above.

22 116. Therefore, as provided by Cal Lab. Code § 203, PLAINTIFF demands up to thirty
23 (30) days of pay as penalty for not paying all wages due at time of termination and demand an
24 accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

25 **EIGHTH CAUSE OF ACTION**

26 For Failure to Provide Accurate, Itemized Wage Statements
27 (Cal. Lab. Code §§ 226; 226.3; 1174.5)
(Plaintiff Against Defendant Legacy)

28 117. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and

1 every allegation set forth above.

2 118. Labor Code section 226 requires defendants to provide employees an accurate
3 itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
4 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
5 inclusive date of the period for which the employee is paid, (7) the name of the employee and his/her
6 or his social security number, (8) the name and address of the legal entity that is the employer, and
7 (9) all applicable hourly rates in effect and the corresponding number of hours worked

8 119. DEFENDANTS failed to provide an accurate wage statement in writing that properly
9 and accurately itemizes all wages, missed meal and rest periods, applicable hourly wages in effect,
10 and reporting time wages owed to PLAINTIFF and thereby also failed to set forth the correct wages
11 earned by the employees.

12 120. DEFENDANTS knowingly and intentionally failed to comply with Labor Code
13 section 226(a) on each and every wage statement that they provided to PLAINTIFF.

14 121. By failing to keep adequate records, as required by Labor Code sections 226 and
15 1174, DEFENDANTS injured PLAINTIFF making it difficult for this employee to calculate the
16 minimum wages owed. Those injuries include unpaid wages, interest, and penalties thereon.

17 122. PLAINTIFF seeks to recover the statutory penalties provided by Labor Code section
18 226(e), 226.3, and 1174.5 for the wage statement violations committed by DEFENDANTS.

19 **NINTH CAUSE OF ACTION**

20 For Recovery of Civil Penalties Under the Labor Code Private Attorney General Act
(Cal. Lab. Code §§ 2698 et seq.)

21 (Plaintiff and Aggrieved Employees Against Defendant Legacy)

22 123. PLAINTIFF and other AGGRIEVED EMPLOYEES incorporates by reference and
23 reallege as if fully stated herein each and every allegation set forth above.

24 124. As a result of the acts alleged herein, PLAINTIFF, as an AGGRIEVED EMPLOYEE
25 within the meaning of Labor Code section 2699, subdivision (c), on behalf of the State of California
26 seeks the recovery of civil penalties against DEFENDANTS pursuant to California Labor Code
27 sections 2698 et seq., for the following knowing and intentional violations of the California Labor
28 Code:

- a. For failing to pay wages, in violation of Labor Code sections 204 and 210;
- b. For failing to pay wages upon termination, in violation of Labor Code sections 201, 202, and 203;
- c. For failing to pay all minimum wages, in violation of Labor Code sections 1194, 1194.2, 1197.1, 218.5, and 218.6;
- d. For failing to compensate employees who were not provided a meal period in violation of Labor Code Section 226.7 and 512; and
- e. For failing to compensate employees who were not provided a rest period in violation of Labor Code Section 226.7 and 512; and
- f. Failing to reimburse employees for work-related expenses in violation of Labor Code Section 2802;
- g. For failing to provide employees who worked more than eight (8) hours per workday and more than forty (40) hours per workweek additional compensation beyond their regular wages in violation of Labor Code Section 510.
- h. For failing to maintain for and provide accurate, itemized wage statements required by Labor Code Section 226, 226.3 and 1174.5.

125. The above-referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and shall include those amounts sufficient to recover underpaid wages pursuant to C.C.R. section 11040 and Labor Code sections §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 515, 558, 1174.5, 1194, 1197.1, 1198, 1199, 2802, and 2699, subdivisions (a) ad (f).

126. PLAINTIFF filed this complaint after the LWDA was afforded the opportunity to consider PLAINTIFF's notice of DEFENDANTS' Labor Code violations and of PLAINTIFF's intent to prosecute a private enforcement action for civil penalties under PAGA. After the LWDA declined to investigate, PLAINTIFF brought this PAGA cause of action against DEFENDANTS, pursuant to California Labor Code section 2699.3, subdivision (a)(2)(A).

DEMAND FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each DEFENDANT, jointly and

severally, as follows:

1. On behalf of the PLAINTIFF:

A. Compensatory damages, according to proof at trial, including unpaid wages, due to PLAINTIFF, during the applicable employment period plus interest thereon at the statutory rate;

B. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;

C. The wages of Plaintiff as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203;

D. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

E. Punitive damages in an amount to punish DEFENDANTS to be proven at trial.

F. Liquidates damages pursuant to Cal. Lab. Code § 1194.2 in an amount equal to the unpaid minimum wages according to proof at trial;

2. On Behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES

i. Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004;

3. On all claims:

A. An award of interest, including prejudgment interest at the legal rate;

B. Such other and further relief as the Court deems just and equitable; and

C. An award of penalties, attorneys' fees and cost of suit, as allowable under the law.

DATED: May 2, 2024

Respectfully submitted,

EMRAN LAW FIRM

By: Harris Emran
Harris Emran
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

PLAINTIFF demand a jury trial on issues triable to a jury.

DATED: May 2, 2024

EMRAN LAW FIRM

By: *Harris Emran*
Harris Emran, Esq.
Attorney for PLAINTIFF